

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
– *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (\_\_\_\_)

Joint Administration Pending

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I)  
AUTHORIZING DEBTORS TO UTILIZE CASH COLLATERAL PURSUANT  
TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO  
PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363  
AND 364; (III) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION  
FINANCING PURSUANT TO 11 U.S.C. § 364 AND (IV) SCHEDULING A  
FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

(“DIP Financing/Cash Collateral Motion”)

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby move this Court (the “**Motion**”) for entry of an interim order (the “**Interim Order**”),<sup>2</sup> in substantially the form attached hereto as Exhibit A, and a final order (the “**Final Order**”), (A) authorizing the Debtors to (i) use cash collateral pursuant to Section 363 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”), (ii) grant adequate protection to the Prepetition Secured Parties (defined below) pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (iii) obtain postpetition financing pursuant to Section 364 of the Bankruptcy Code and (B) scheduling interim and final hearings pursuant to Rule 4001(b) and (c) of the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

<sup>2</sup> Unless indicated otherwise, capitalized terms used but not immediately defined herein shall have the meanings ascribed to them in the Interim Order.

Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), all as more fully described herein. In support of this Motion, the Debtors respectfully state:<sup>3</sup>

**Preliminary Statement**

1. Prior to the Petition Date (defined below), the Debtors engaged in lengthy discussions with certain First Lien Lenders (defined below) about financing these Chapter 11 Cases (defined below). Those discussions culminated with certain First Lien Lenders holding over 40% of the First Lien Obligations (the “**Majority First Lien Lenders**”) (i) agreeing to the use of Cash Collateral (defined below) pursuant to the terms and conditions of the Interim Order and an agreed upon budget (the “**Approved Budget**”) and (ii) permitting the Intercompany Loan (defined below) to prime all prepetition First Lien Obligations. The Intercompany Loan will not prime valid and properly perfected Prepetition Prior Liens (defined below).

2. The Debtors intend to support the ongoing operations of their business during these cases through the use of Cash Collateral and the Intercompany Loan. The Intercompany Loan will consist of \$6,000,000 in aggregate principal amount of intercompany term loans to be made by a non-Debtor affiliate of the Debtors, Graceway Canada Company (“**Graceway Canada**” or the “**Postpetition Lender**”), to Graceway Pharmaceuticals, LLC (“**Graceway Pharma**” or the “**Borrower**”) for the benefit of all of the Debtors. The Intercompany Loan will be evidenced by the Term Loan Notes by and among Debtor Graceway Pharma, as borrower, and non-Debtor Graceway Canada, as lender (the “**Intercompany Notes**”). The Debtors will provide a secured guarantee of the Intercompany Loan in favor of Graceway Canada, which will be evidenced by the Guaranty Agreement (the “**Intercompany Guarantee**”). Upon the entry the

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<sup>3</sup> The facts and circumstances supporting this Motion are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions (the “**First Day Declaration**”), filed on the Petition Date (defined below).

Interim Order, the Borrower seeks to be permitted to borrow all amounts available under the Intercompany Notes, subject to the terms and conditions contained in the Interim Order and the Approved Budget.<sup>4</sup>

3. The reasons supporting the Debtors' request for authority to use Cash Collateral and obtain postpetition financing are compelling, yet simple. As explained in greater detail below, the Debtors will use both the Intercompany Loan and Cash Collateral to provide liquidity for working capital and for other general corporate purposes of the Debtors up to the date upon which the proposed sale of substantially all of the Debtors' assets (the "Sale") is consummated, as set forth in more detail in the *Debtors' Motion for Entry of (I) an Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) the Form and Manner of Notice of the Sale Hearing and (D) Other Related Relief; and (II) An Order Authorizing (A) the Sale of Certain Assets of the Debtors Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances, (B) the Debtors to Enter Into and Perform Their Obligations Under the Asset Purchase Agreement, (C) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases; and (D) Granting Related Relief* (the "Sale Motion") filed contemporaneously herewith.

4. Upon closing the Sale, the Debtors intend to use certain proceeds of the Sale and/or Cash Collateral to repay the Intercompany Loan and implement an orderly distribution of the sale proceeds and the liquidation of their remaining assets for the benefit of their creditors pursuant to a liquidating plan. At this time, the Debtors anticipate that they will be able to

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<sup>4</sup> A copy of the Intercompany Notes in substantially final form is annexed to the Interim Order as Exhibit B. The Intercompany Guaranty is attached as Exhibit A to the Intercompany Notes.

confirm a plan of liquidation because the Approved Budget provides the Debtors with sufficient liquidity to pay all currently anticipated administrative expenses. After the consummation of the Sale, the Debtors will be able to determine which constituents in addition to the holders of the First Lien Obligations, if any, will be entitled to receive a distribution pursuant to a plan of liquidation.

5. By this Motion and pursuant to Sections 105(a), 361, 362, 363, and 364 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, and 9014, the Debtors hereby seek entry of two orders - an Interim Order in the form annexed hereto as Exhibit A and a Final Order,<sup>5</sup> following notice of the Motion and the Interim Order and a hearing (the “**Final Hearing**”) on the relief requested - approving such relief on a final basis (together, the “**DIP Orders**”), which in each case:

- (a) authorize the Debtors to use Prepetition Collateral, including, without limitation, “cash collateral,” as such term is defined in Section 363 of the Bankruptcy Code (the “**Cash Collateral**”), in which the Prepetition Secured Parties have a Lien or other interest, whether existing on the Petition Date, arising pursuant to the DIP Orders or otherwise;
- (b) authorize the Borrower to obtain, and authorizes each of the other Debtors unconditionally to guarantee, jointly and severally, the Borrower’s obligations in respect of, senior secured postpetition financing, which would consist of a \$6,000,000 Intercompany Loan from the Postpetition Lender to the Borrower;
- (c) grants, as of the Petition Date and in accordance with the relative priorities set forth in the DIP Orders, certain adequate protection to the Prepetition Secured Parties;
- (d) authorizes the Borrower and each of the other Debtors to grant to the Postpetition Lender the DIP Protections (as defined below);
- (e) modifies the automatic stay imposed by Section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Orders and subject in all respects to the Debtors’ rights under paragraph 14 of the DIP Orders;

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<sup>5</sup> A copy of the proposed Final Order shall be filed under separate cover prior to the Final Hearing and shall be in form and substance substantially similar to the Interim Order.

- (f) schedules the Final Hearing on the DIP Motion to be held within thirty-five (35) days after the Petition Date to consider entry of the Final Order acceptable in form and substance to the First Lien Agent and Majority First Lien Lenders, which grants all of the relief requested in the DIP Motion on a final basis; and
- (g) waives any applicable stay (including under Bankruptcy Rule 6004 and any applicable Local Rules) and provides for immediate effectiveness of the DIP Orders.

### **Jurisdiction**

6. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

7. The statutory bases for the relief requested herein are Sections 105(a), 361, 362, 363, 364, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rules 2002-1 and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

### **Background**

8. On the date hereof (the “**Petition Date**”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors are operating their business and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these Chapter 11 Cases.

9. The Debtors are a specialty pharmaceutical company focused on generating sales growth and developing, in-licensing and acquiring branded prescription products primarily in the areas of dermatology, respiratory, and women's health. The Debtors were founded with a culture of commitment to physicians and patients, and a dedication to enhancing the quality of health care. The Debtors are committed to providing innovative new therapies in the form of unique products and drug delivery technologies.

10. As of the Petition Date, the Debtors' products sold in the United States include, among others: Zyclara® (imiquimod) Cream 3.75% ("**Zyclara**"), Aldara® (imiquimod) Cream 5% ("**Aldara**"), Maxair® Autohaler® (pirbuterol acetate inhalation aerosol) ("**Maxair**"), Atopiclair® Nonsteroidal Cream ("**Atopiclair**"), and Estrasorb® (estradiol topical emulsion) ("**Estrasorb**"). Zyclara is a second generation imiquimod product developed by the Debtors, and is the core product of the Debtors' business. Zyclara received approval from the United States Food and Drug Administration ("**FDA**") for treatment of actinic keratoses ("**AK**") and external genital warts ("**EGW**") in March 2010 and March 2011, respectively. The Debtors have been granted regulatory exclusivity to market Zyclara in the United States through March 2013 for AK and March 2014 for EGW. Additionally, various patents are pending, and the Debtors expect near term approval of certain patents.

11. The Debtors were founded in 2006 through a partnership of industry veteran Jefferson J. Gregory and GTCR Golder Rauner, LLC ("**GTCR**"), a leader in the private equity industry for more than 25 years. On January 2, 2007, the Debtors announced that the Debtors had completed the acquisition of the North and South America pharmaceuticals business of 3M Company (together with its subsidiaries and affiliates, "**3M**") for approximately \$875 million. This acquisition positioned the Debtors as a leader in the market of specialty pharmaceutical

products. As part of the purchase, the Debtors acquired several products from 3M, including Aldara. Also, on January 2, 2007, the Debtors announced that Chester Valley Pharmaceuticals, LLC, a dermatology-focused specialty pharmaceutical company and another company partially owned by GTCR would merge into Graceway Pharma.

12. The Debtors are headquartered in Bristol, Tennessee, and the Debtors' sales and marketing efforts are directed from the Debtors' offices in Exton, Pennsylvania. The Debtors' sales and marketing infrastructure is designed to efficiently reach critical points in the pharmaceutical product distribution chain, and includes a highly trained sales force capable of providing sales coverage across the United States. In total, the Debtors employ approximately 165 full-time employees, 82 of which are sales related employees.

13. Since 2010 the Debtors have faced substantial declines in their net sales and a corresponding drop in EBITDA. These declines result primarily from the combination of the global recession and unfortunate and devastating litigation results with respect to generic competition against Aldara. In 2010, the Debtors had total net sales of approximately \$219.53 million, consisting of product sales of \$150.89 million and royalty and licensing revenues of \$68.64 million. Of the total net sales, net sales from Aldara accounted for 23.9%, royalty revenues of Aldara (Authorized Generic) accounted for 17.7%, net sales from Maxair accounted for 12.0%, net sales from Zyclara accounted for 17.8%, licensing revenues for Zyclara accounted for 13.2%, and the Debtors' other products accounted for the remaining 15.4%. The Debtors EBITDA for 2010 was \$83.33 million.

**A. Capital Structure**

14. Graceway Pharma is the direct and indirect parent of Chester Valley Holdings, LLC, Chester Valley Pharmaceuticals, LLC, Graceway Canada Holdings, Inc. and Graceway

International, Inc. Graceway Pharma is wholly owned by Graceway Holdings, LLC (“**Holdings**”), which is wholly owned by Graceway Pharma Holding Corp (“**Parent**”).

**B. Prepetition Indebtedness**

15. First Lien Credit Facility. Prior to the Petition Date, the Borrower entered into that certain First Lien Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the “**First Lien Credit Agreement**”), among, inter alia, Holdings, the Borrower, the lenders party thereto (collectively, “**First Lien Lenders**”), and Bank of America, N.A. (“**BofA**”), as administrative agent for the First Lien Lenders and collateral agent for the First Lien Claimholders (as defined in the Intercreditor Agreement (defined below), without giving effect to any cap provided for therein) (BofA, in such capacity, the “**First Lien Agent**”), Swing Line Lender (as defined in the First Lien Credit Agreement) and L/C Issuer (as defined in the First Lien Credit Agreement). Pursuant to the First Lien Credit Agreement, the First Lien Agent, the First Lien Lenders, the Swing Line Lender and the L/C Issuer agreed to extend certain loans to, and issue letters of credit for the account of, the Borrower, including (a) a Term B loan of \$650 million, with the balance payable on May 3, 2012, (b) a revolving credit facility in an aggregate principal amount of up to \$30 million, (c) a swing line loan in an aggregate principal amount of up to \$10 million and (d) the issuance of up to \$10 million of letters of credit.

16. The obligations (the “**First Lien Obligations**”) of the Borrower, Holdings and the Debtors other than Parent as guarantors (the “**Guarantors**”) under the Collateral Documents (as defined in the First Lien Credit Agreement) (as such documents are amended, restated, supplemented or otherwise modified from time to time, the “**First Lien Collateral Documents**”)



were secured by, among other things, a first priority continuing security interest in substantially all of the Debtor's (other than Parent's) assets and property (the "**First Priority Liens**").

17. Amendments to the First Lien Credit Agreement. The Debtors have from time to time addressed issues arising under the First Lien Credit Agreement with the First Lien Lenders, beginning in 2009. At that time, the Debtors and the First Lien Lenders desired to clarify the First Lien Credit Agreement with respect to the effect of certain payments on Excess Cash Flow (as defined in the First Lien Credit Agreement) and to recalculate Excess Cash Flow accordingly. Borrower, Holdings and certain of the First Lien Lenders therefore entered into the Clarification and Amendment to Credit Agreement (the "**First Amendment**") dated August 7, 2009.

18. In early 2010, the Debtors were considering the purchase of loans from existing lenders. Accordingly, Borrower, Holdings and certain of the First Lien Lenders entered into the Second Amendment to First Lien Credit Agreement (the "**Second Amendment**"), dated January 22, 2010. The loan purchase authorized by the Second Amendment did not occur.

19. Later in 2010, the Debtors faced certain events of default under the First Lien Credit Agreement. Borrower, Holdings and certain of the First Lien Lenders entered into the Third Amendment to First Lien Credit Agreement (the "**Third Amendment**") on October 15, 2010. The Third Amendment waived the then-currently existing events of default, subject to an increase in the interest rate margins payable to the First Lien Lenders, a pay-down of First Lien Obligations by the Debtors, and increased communications between the Debtors and the First Lien Lenders with respect to the Debtors' financial condition.

20. Second Lien Credit Agreement. Also prior to the Petition Date, the Borrower entered into that certain Second Lien Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "**Second Lien Credit**"),

Agreement”), among, inter alia, Holdings, the Borrower, the lenders party thereto (collectively, “Second Lien Lenders”) and Deutsche Bank Trust Company Americas (“DB”), as administrative agent for the Second Lien Lenders and collateral agent for the Second Lien Claimholders (as defined in the Intercreditor Agreement) (the Second Lien Claimholders and First Lien Claimholders collectively, the “Prepetition Secured Parties”) (DB, in such capacity, the “Second Lien Agent”). Pursuant to the Second Lien Credit Agreement, the Second Lien Agent and the Second Lien Lenders agreed to extend certain loans to the Borrower totaling \$330 million in the aggregate.

21. The obligations (the “Second Lien Obligations” and, together with the First Lien Obligations, the “Prepetition Obligations”) of Borrower, Holdings and the Guarantors under the Collateral Documents (as defined in the Second Lien Credit Agreement) (as such documents are amended, restated, supplemented or otherwise modified from time to time, the “Second Lien Collateral Documents”) were secured by, among other things, a second priority continuing security interest in substantially all of the Debtor’s (other than Parent’s) assets and property (the “Second Priority Liens” and, together with the First Priority Liens, the “Prepetition Liens”).

22. Second Lien Credit Agreement Forbearance. On March 8, 2011, the Borrower, Holdings and the Second Lien Agent entered into a forbearance agreement (the “Forbearance Agreement”), pursuant to which certain of the Second Lien Lenders agreed to forbear on exercising remedies and to continue providing credit to Debtors under the Second Lien Credit Agreement. Under its original terms, the Forbearance Agreement was set to expire on March 25, 2011. By means of four subsequent amendments to the Forbearance Agreement, dated March 23, 2011, April 7, 2011, April 21, 2011 and May 13, 2011, the Forbearance Agreement was extended through September 15, 2011.

23. Intercreditor Agreement. Pursuant to the Intercreditor Agreement, dated as of May 3, 2007 (the “**Intercreditor Agreement**,” attached hereto as Exhibit B, and together with the First Lien Documents and the Second Lien Documents, the “**Prepetition Documents**”), among Holdings, the Borrower, the First Lien Agent, the Second Lien Agent and BofA as Collateral Agent, the Second Priority Liens are subject and subordinate to the First Priority Liens on the terms contained in the Intercreditor Agreement. Pursuant to Section 6.01 of the Intercreditor Agreement, because the First Lien Agent consents to the use of Cash Collateral during the pendency of the Chapter 11 Cases, the Second Lien Agent may not object to the use of Cash Collateral. Intercreditor Agreement at § 6.01. In addition, the Second Lien Agent may not request any form of adequate protection other than the Adequate Protection Replacement Liens and Adequate Protection Super-Priority Claims provided in the Interim Order. Id. at §§ 6.04(a), (b).

24. Mezzanine Credit Agreement. Also prior to the Petition Date, the Borrower entered into that certain Mezzanine Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the “**Mezzanine Credit Agreement**”), among, inter alia, Holdings, the Borrower, the lenders party thereto (collectively, “**Mezzanine Lenders**”) and Goldman Sachs Credit Partners L.P. (“**Goldman**”), as administrative agent for the Mezzanine Lenders (Goldman, in such capacity, the “**Mezzanine Agent**”). Pursuant to the Mezzanine Credit Agreement, the Mezzanine Agent and the Mezzanine Lenders agreed to extend certain unsecured loans to the Borrower totaling \$70 million in the aggregate.

25. Amounts Owed under Prepetition Documents. Each of the credit facilities and the amounts owed thereunder is set forth in the chart below.

Type of Prepetition Indebtedness	Approximate Amount of Outstanding Debt as of the Petition Date
First Lien Debt	\$430,698,397.58 (in the aggregate)
Revolver	\$22,054,563.23
Term B	\$408,643,834.35
Second Lien Debt	\$330,000,000
Mezzanine Debt	\$80,106,753.34
Trade Debt (unsecured)	\$30,000,000

**Terms and Conditions of the Intercompany Loan and Use of Cash Collateral**

**A. Highlighted Provisions under Bankruptcy Rule 4001<sup>6</sup> and Local Rule 4001-2<sup>7</sup>**

26. The following sets forth the sections of the Intercompany Loan and the Interim Order that are required to be identified in accordance with Rule 4001(c)(i)(B) and Local Rule 4001-2(a)(i):

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
N/A	Borrower	Graceway Pharmaceuticals, LLC	Interim Order: Introductory paragraph (ii)
N/A	Lender	Graceway Canada Company	Interim Order: Introductory paragraph (ii)
N/A	Size of facility	\$6,000,000, available upon entry of the Interim Order.	Interim Order: Introductory paragraph (ii)
N/A	Use of proceeds	The proceeds of the Intercompany Loan shall be used to enable the Debtors to continue to operate their	Interim Order: ¶¶ 2

<sup>6</sup> Certain provisions referenced in Bankruptcy Rule 4001 are not applicable here: (i) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation or entry of a confirmation order, Rule 4001(c)(i)(B)(vi); (ii) indemnification of any entity, Rule 4001(c)(i)(B)(ix); (iii) prepayment premiums, Rule 4001(c)(i)(B)(xii); and (iv) waiver or modification of authority to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, Bankruptcy Rule 4001(c)(i)(B)(v).

<sup>7</sup> Certain provisions referenced in Local Rule 4001-2 are not applicable here: (i) roll-up provisions, Local Rule 4001-2(a)(i)(E); (ii) grant of cross-collateralization protection, Local Rule 4001-2(a)(i)(A).

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		business, subject to the terms and conditions in the Interim Order, the Approved Budget <sup>8</sup> and Budget Covenants.	
N/A	Application of proceeds	<p>Prior to the Cash Collateral Termination Date, proceeds of the Intercompany Loan and the use of Cash Collateral will be used solely for payment of the disbursements set forth in the Approved Budget subject to the terms and conditions of the Interim Order. On or after the Cash Collateral Termination Date, such proceeds will be applied solely (x) to fund (1) unpaid fees required to be paid to the clerk of the Court and to the office of the United States Trustee, whether arising prior to or after the delivery of the Carve-Out Trigger Notice, in an amount equal to \$201,250, (2) any unpaid amounts incurred and earned prior to the occurrence of the Cash Collateral Termination Date under each of the Debtors' Professionals Carve-Out Cap and Committee Professionals Carve-Out Cap and (3) the Debtors' Professionals Post Carve-Out Cap and Committee Professionals Post Carve-Out Cap (the aggregate of such amounts in clauses (1), (2) and (3) above, the "<b>Maximum Carve-Out Amount</b>") pursuant to the terms of the Interim Order and (y) to pay the First Lien Professional Fees.</p> <p>Upon any sale or disposition of substantially all of the Adequate Protection Collateral, (i) after the Cash Collateral Termination Date, the Maximum Carve-Out Amount will be funded and the Intercompany Loan will be paid in full pursuant to the Interim Order before any payments will be made on account of the First Lien Obligations and (ii) prior to the Cash Collateral Termination Date, all amounts set forth in section 4(b) of the Sale Support Agreement will be funded and the Intercompany Loan shall be paid in full pursuant to the Interim Order before any payments will be made on account of the First Lien Obligations.</p>	Interim Order: ¶¶ 3, 13
N/A	Amount of loan	The Intercompany Loan consists of a Tranche A Intercompany Loan in aggregate principal amount equal to \$3,800,000 and a Tranche B Intercompany Loan in aggregate principal amount equal to	Interim Order: ¶ 5(a)

<sup>8</sup> A copy of the Approved Budget is attached to the Interim Order as Exhibit 1.

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		\$2,200,000. The Borrower has requested authority to borrow the Tranche A Intercompany Loan and Tranche B Intercompany Loan no later than the third day after the entry of the Interim Order. The Borrower seeks authorization to use the proceeds of (i) the Tranche A Intercompany Loan only in accordance with the terms and conditions of the Interim Order, including, without limitation, the Approved Budget and Budget Covenants and (ii) the Tranche B Intercompany Loan only in accordance with the terms and conditions of the Interim Order, including, without limitation, the Approved Budget and Budget Covenants, and with the prior written consent of the Approving Majority First Lien Lenders. <sup>9</sup> At this time, the Approving Majority First Lien Lenders have consented to the use of the proceeds of the Tranche B Intercompany Loan solely to pay the Expense Reimbursement Amount if approved by the Court pursuant to the Bidding Procedures Order (defined below) and due and payable pursuant to the terms of the Asset Purchase Agreement (defined below).	
N/A	Interest rate	Interest on the outstanding principal amount of the Intercompany Loan will be capitalized and added to the principal until the outstanding principal amount (including all previously capitalized interest) is paid in full on the Maturity Date. Interest will accrue at 4.75% per annum. Interest will be capitalized quarterly, commencing with the Debtors' fiscal quarter ending December 31, 2011.	Interim Order: ¶ 5(b)
N/A	Term/ Maturity date	The Intercompany Loan matures and must be paid in full (including all accrued and previously capitalized interest) on the earlier of one year from the date of entry of the Interim Order or closing of the Sale.	Interim Order: ¶ 5(c)
N/A	Fees	Other than payment of reasonable fees, costs and expenses of the First Lien Agent's professionals, no fees, costs, expenses or other charges will accrue or be payable in connection with the Intercompany Loan.	Interim Order: ¶ 5(b)

<sup>9</sup> Approving Majority First Lien Lenders is defined as at least two First Lien Lenders holding in aggregate a majority of the then outstanding First Lien Obligations held by the Consenting First Lien Lenders (as defined in the Sale Support Agreement, dated as of September 28, 2011 (the "Sale Support Agreement"), entered by and among the Debtors, Graceway Canada and the First Lien Lenders from time to time party thereto).

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
Bankruptcy Rule 4001 (c)(i)(B)(i) Local Rule 4001-2(a)(i)(G)	Liens/ security for Postpetition Lender	As security for the Intercompany Loan, the Postpetition Lender will be granted a perfected, first priority, senior priming Lien (the “ <b>DIP Lien</b> ”) on all Adequate Protection Collateral (including, without limitation, Cash Collateral) that is senior to (A) the Prepetition Liens, (B) the Adequate Protection Replacement Liens and (C) any Liens that are junior to the Prepetition Liens, after giving effect to any intercreditor or subordination agreements (the Liens referenced in clauses (A), (B) and (C), collectively, the “ <b>Primed Liens</b> ”).	Interim Order: ¶ 5(e)
Bankruptcy Rule 4001 (c)(i)(B)(ii)	Adequate protection	The Prepetition Secured Parties will receive, subject in each case to the Intercreditor Agreement: (1) Adequate Protection Replacement Liens to the extent of any Diminution in Value, (2) Adequate Protection Super-Priority Claims to the extent of any Diminution in Value, (3) an adequate protection payment of \$973,838.09 from the Debtors to the First Lien Agent within three Business Days of the date of entry of the Interim Order, (4) timely payment of the fees, costs and expenses of the First Lien Agent and its professionals and (5) all information, reports, documents and other material that the First Lien Agent, the Second Lien Agent and their respective advisors may reasonably request (it being understood that the First Lien Agent, the Second Lien Agent and their respective advisors may distribute such information, reports, documents and other material to the First Lien Claimholders and Second Lien Claimholders, as applicable, upon request).	Interim Order: ¶ 4
Local Rule 4001-2(a)(i)(F)	Carve-out Disparate treatment of professionals	“ <b>Carve-Out</b> ” means: (i) all unpaid fees required to be paid to the clerk of the Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a), whether arising prior to or after the delivery of the Carve-Out Trigger Notice (defined below); (ii) all reasonable and documented unpaid fees and expenses, including, without limitation, success fees, of professionals retained by the Debtors in these Chapter 11 Cases (the “ <b>Debtors’ Professionals</b> ”) that are incurred and earned prior to the delivery by the First Lien Agent of a Carve-Out Trigger Notice, have been or are subsequently allowed by the Court, do not exceed the cumulative amount budgeted for each such Debtors’ Professional in the applicable line item in the Approved Budget and remain unpaid after application	Interim Order: ¶ 8

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		<p>of any retainers (each such budgeted amount, a <b><u>“Debtors’ Professionals Carve-Out Cap”</u></b>); (iii) all reasonable and documented unpaid fees and expenses of professionals retained by the Committee in these Chapter 11 Cases (the <b><u>“Committee’s Professionals”</u></b>) and all reasonable and documented unpaid expenses of the members of such Committee (<b><u>“Committee Members”</u></b>) that are, in each case, incurred and earned prior to the delivery by the First Lien Agent of a Carve-Out Trigger Notice and have been or are subsequently allowed by the Court, in an aggregate amount (for both Committee Members and the Committee’s Professionals) not to exceed \$600,000 (the <b><u>“Committee Professionals Carve-Out Cap”</u></b>); (iv) all reasonable and documented unpaid fees and expenses, including, without limitation, success fees, of the Debtors’ Professionals that are incurred and/or earned on or after the delivery by the First Lien Agent of a Carve-Out Trigger Notice, that are allowed by the Court and remain unpaid after application of any retainers, in an aggregate amount not to exceed the sum of (A) if not paid prior to delivery by the First Lien Agent of a Carve-Out Trigger Notice, the Sale Transaction Fee due and owing to Lazard Frères &amp; Co. LLC (<b><u>“Lazard”</u></b>) as defined in and pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and the Borrower (the <b><u>“Lazard Success Fee”</u></b>) and (B) \$1,250,000 (the <b><u>“Debtors’ Professionals Post Carve-Out Cap”</u></b>); and (v) all reasonable and documented unpaid fees and expenses of the Committee Professionals that are incurred and/or earned on or after the delivery by the First Lien Agent of a Carve-Out Trigger Notice and are allowed by the Court, in an aggregate amount not to exceed \$50,000 (the <b><u>“Committee Professionals Post Carve-Out Cap”</u></b> and together with the Debtors’ Professionals Carve-Out Cap, the Debtors’ Professionals Post Carve-Out Cap and Committee Professionals Carve-Out Cap, the <b><u>“Carve-Out Cap”</u></b>). The term <b><u>“Carve-Out Trigger Notice”</u></b> means a written notice delivered by the First Lien Agent to the Debtors’ lead counsel, counsel for the Postpetition Lender, the U.S. Trustee, counsel for the Second Lien Agent, and counsel to any Committee appointed in these Chapter 11 Cases, which notice may be delivered at any time following the occurrence and during the</p>	



Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		continuation of any Event of Default, expressly stating that the Carve-Out is invoked.	
Bankruptcy Rule 4001 (c)(i)(B)(x) Local Rule 4001-2(a)(i)	506(c) waiver	Subject to the entry of the Final Order, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases (including, without limitation, any costs and expenses of preserving or disposing of property securing the Prepetition Obligations) will be charged against or recovered from or against any or all of the Prepetition Secured Parties, the Adequate Protection Collateral, the Prepetition Collateral, and the Cash Collateral, in each case, pursuant to Section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the First Lien Agent and the Approving Majority First Lien Lenders and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the First Lien Claimholders.	Interim Order: ¶ 9
Bankruptcy Rule 4001 (c)(i)(B)(viii)	Release, waiver, or limitation on claims or other causes of action belonging to the estate or the trustee	The Debtors' Stipulations are binding upon the Debtors, Graceway Canada and any Chapter 11 trustee in all circumstances. The Debtors' Stipulations are binding on each other party in interest, including any Committee, unless (i) such Committee or any other party in interest (other than the Debtors, Graceway Canada or any Chapter 11 trustee) obtains the authority to commence and actually commences, or if the Chapter 11 Cases are converted to cases under Chapter 7 prior to the expiration of the Challenge Period (defined below), the Chapter 7 trustee in such Successor Cases actually commences, on or before on or before sixty (60) days after the appointment of any Committee (or if no Committee has been so appointed, seventy-five (75) days from the Petition Date) (such time period shall be referred to as the " <b><u>Challenge Period</u></b> ," and the date that is the last calendar day of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the " <b><u>Challenge Period Termination Date</u></b> "), (x) a contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings or releases included in the Debtors' Stipulations, or (y) a contested matter or adversary proceeding against any or all of the Prepetition Secured Parties in connection with or related to the Prepetition Obligations, or the actions or inactions of any or all of the Prepetition Secured	Interim Order: ¶ 7

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		Parties arising out of or related to the Prepetition Obligations, or otherwise, including, without limitation, any claim against any or all of the Prepetition Secured Parties in the nature of a “lender liability” cause of action, setoff, counterclaim or defense to the Prepetition Obligations (including but not limited to those under Sections 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any or all of the Prepetition Secured Parties) (the objections, challenges, actions and claims referenced in clauses (x) and (y), collectively, the “ <u>Claims and Defenses</u> ”) and (ii) the Court rules in favor of the plaintiff in any such timely and properly commenced contested matter or adversary proceeding.	
Bankruptcy Rule 4001 (c)(i)(B)(ii) Local Rule 4001-2(a)(i)(B)	Determination of validity, enforceability, or amount of a prepetition claim	The Debtors’ Stipulations are binding on the Debtors, Graceway Canada and any Chapter 11 trustee in all circumstances. As to the Debtors, for themselves and not their estates, Graceway Canada, for itself and its estate, and any Chapter 11 trustee, all Claims and Defenses against the Prepetition Secured Parties are irrevocably waived and relinquished as of the Petition Date.	Interim Order: ¶ 7
Bankruptcy Rule 4001 (c)(i)(B)(iv)	Waiver or modification of the automatic stay	<p>The automatic stay is waived to permit the First Lien Agent, the Second Lien Agent and the Postpetition Lender, as applicable (in the case of the First Lien Agent and Second Lien Agent, solely with respect to the Adequate Protection Replacement Liens) to file financing statements, mortgages, security agreements, notices of Liens and other similar documents.</p> <p>The automatic stay otherwise applicable to the First Lien Claimholders is modified, without requiring prior notice to or authorization of the Court, to the extent necessary to permit the Approving Majority First Lien Lenders to exercise the following remedies immediately upon the occurrence of an Event of Default: (i) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral, including Cash Collateral derived solely from the proceeds of Adequate Protection Collateral, and to use Prepetition Collateral other than in the ordinary course (any such declaration to be made to the Debtors, the Postpetition Lender, counsel to the Committee (if appointed) and the United States Trustee and to be referred to herein as a “<u>Termination</u>”</p>	Interim Order ¶¶ 6; 14(a), (c)

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		<p><b><u>Declaration</u></b>” and the date which is the earliest to occur of any such Termination Declaration being herein referred to as the “<b><u>Termination Declaration Date</u></b>”) and/or (ii) the First Lien Claimholders shall be permitted to reduce any claim to judgment.</p> <p>The automatic stay is modified to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Prepetition Secured Parties and the Postpetition Lender under the Interim Order, (ii) authorize the Postpetition Lender to retain and apply payments hereunder in connection with an Intercompany Loan Default and (iii) otherwise implement and effectuate the provisions of the Interim Order.</p>	
Bankruptcy Rule 4001 (c)(i)(B)(v)	Waiver or modification of authority to request use of cash collateral or request authority to obtain credit	No proceeds from the Intercompany Loan, Adequate Protection Collateral, Cash Collateral, Prepetition Collateral, or any portion of the Carve-Out may be used by any of the Debtors, any Committee, any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Case, or any other person, party or entity to (or to pay any professional fees and disbursements incurred in connection therewith) request authorization to obtain postpetition loans or other financial accommodations pursuant to Bankruptcy Code Section 364(c) or (d), or otherwise, other than the Intercompany Loan or loans used to refinance the First Lien Obligations in full.	Interim Order ¶ 15
Bankruptcy Rule 4001 (c)(i)(B)(vii)	Waiver or modification of applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien	<p>To the extent of any Diminution in Value, the First Lien Agent and Second Lien Agent, for the benefit of the First Lien Claimholders and Second Lien Claimholders, as applicable, are granted, pursuant to Sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, Adequate Protection Replacement Liens upon all Adequate Protection Collateral.</p> <p>The DIP Liens granted to the Postpetition Lender are first priority senior Liens that (i) are subject only to (A) valid, enforceable, non-avoidable and perfected Liens in existence on the Petition Date that (I) after giving effect to any intercreditor or subordination agreement, are senior in priority to the Prepetition Liens and (II) are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and after giving effect to any intercreditor or</p>	Interim Order ¶¶ 4(a); 5(f).

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		<p>subordination agreement are senior in priority to the Prepetition Liens (collectively, the “<b><u>Prepetition Prior Liens</u></b>”) and (B) the Carve-Out (to the extent provided in the provisions of the Interim Order), and (ii) are senior to all prepetition and postpetition Liens of any other person or entity (including, without limitation, the Primed Liens). The DIP Liens and the DIP Super-Priority Claims (A) are not subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code or, subject to entry of the Final Order, Section 506(c) of the Bankruptcy Code, (B) are not be subordinate to, or pari passu with, (x) any Lien that is avoided and preserved for the benefit of the Debtors and their estates under Section 551 of the Bankruptcy Code or (y) any other intercompany or affiliate Liens of the Debtors, and (C) are valid and enforceable in any Successor Case and/or upon the dismissal of any of the Chapter 11 Cases.</p> <p>The Interim Order is sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the Adequate Protection Replacement Liens and the DIP Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the Adequate Protection Replacement Liens and the DIP Liens or to entitle the Adequate Protection Replacement Liens and the DIP Liens to the priorities granted in the Interim Order.</p>	
Bankruptcy Rule 4001 (c)(i)(B)(xi) Local Rule 4001-2(a)(i)(D)	Liens granted on claims arising under chapters 5 or 7	Subject to entry of a Final Order, Adequate Protection Collateral includes proceeds of Avoidance Actions, and is subject to the DIP Liens and the Adequate Protection Replacement Liens.	Interim Order ¶¶ 4(a), 5(e)

## B. Summary of Principal Terms of the Intercompany Loan

27. The terms and conditions of the Intercompany Notes, the Intercompany Guarantee and the Interim Order were negotiated by the parties in good faith and at arm’s length, and are

fair and reasonable under the circumstances. Accordingly, the Postpetition Lender should be accorded the benefits of Section 364(e) of the Bankruptcy Code in respect of such agreement.

28. The Intercompany Loan consists of a tranche A intercompany term loan in aggregate principal amount equal to \$3,800,000 (the “Tranche A Intercompany Loan”) and a tranche B intercompany term loan in aggregate principal amount equal to \$2,200,000 (the “Tranche B Intercompany Loan”). The Debtors agree to use the proceeds of the Tranche A Intercompany Loan and Tranche B Intercompany Loan only in accordance with the terms and conditions of the Interim Order, including, without limitation, the Approved Budget and Budget Covenants. The Debtors further agree to use the proceeds of the Tranche B Intercompany Loan only with the prior written consent of the Approving Majority First Lien Lenders (defined below); provided, however, that the Approving Majority First Lien Lenders have consented to the use of the proceeds of the Tranche B Intercompany Loan to pay the Expense Reimbursement Amount (as defined in the Asset Purchase Agreement, defined below) if approved by the Court pursuant to the Bidding Procedures Order and due and payable pursuant to the terms of the Asset Purchase Agreement).

29. Interest on the outstanding principal amount of the Intercompany Loan will be capitalized and added to the principal amount until the outstanding principal amount (including all previously capitalized interest) is paid in full on the Maturity Date (defined below). Interest will accrue at 4.75% per annum. Interest will be capitalized quarterly, commencing with the Debtors’ fiscal quarter ending December 31, 2011. No fees, costs, expenses or other charges will accrue or be payable in connection with the Intercompany Loan.

30. The Intercompany Loan matures and must be paid in full (including all accrued and previously capitalized interest) on the earlier of one year from the date of entry of the

Interim Order or the effective date of the Debtors' chapter 11 plan (the "**Maturity Date**"). The Intercompany Loan is also due and payable upon consummation of the Sale and the Majority First Lien Lenders have agreed, and the DIP Orders provide, that the proceeds of the Sale will be used to repay the Intercompany Loan prior to the payment of the First Lien Obligations.

31. The provisions above were negotiated and are necessary for the Borrower to procure the financing made available under the Intercompany Loan in a sufficient amount and on a timely basis. The Debtors believe that the Postpetition Lender is acting in good faith and is providing to the Debtors' estates with reasonably equivalent value and fair consideration in exchange for the treatment of the Postpetition Lender pursuant to the Interim Order.

**C. Use of Cash Collateral**

32. During the ordinary course of operations, the Debtors generate cash from the use of the assets pledged under the Prepetition Documents. The Debtors use Cash Collateral in the normal course of their business in order to finance their operations and make essential payments, such as employee payroll, taxes and inventory. As of the Petition Date, the Debtors' books reflect a cash balance of approximately \$4.5 million. It is imperative that the Debtors obtain authority to use Cash Collateral. Without the use of Cash Collateral, the Debtors will be unable to meet their working capital needs. The Debtors therefore request authorization to use the proceeds of the Prepetition Secured Parties' collateral and Cash Collateral in accordance with the terms of the Intercompany Loan and the DIP Orders to fund the Debtors' operation of their businesses.

33. The consensual Cash Collateral use arrangement is predicated upon specific sale milestones that, unless otherwise waived by the Approving Majority First Lien Lenders, the Debtors must take all action reasonably necessary to achieve. The sale milestones include: (a)

filing the Sale Motion on or within three (3) business days following the Petition Date; (b) entry of a Court order (the “**Bidding Procedures Order**”) approving the procedures for bidding on the Debtors’ assets (the “**Bidding Procedures**”) on or within forty-five (45) days after the Petition Date; (c) entry of a Court order (the “**Sale Order**”) approving the Sale by January 2, 2012; and (d) the consummation of the Sale by January 27, 2012. In addition, the consensual Cash Collateral use arrangement requires the Debtors to enter into the asset purchase agreement dated September 27, 2011 (the “**Asset Purchase Agreement**”) or another transaction (the “**Alternative Transaction**”) that is acceptable to the Postpetition Lender and the Approving Majority First Lien Lenders.

**D. Adequate Protection**

34. As adequate protection for the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral) the Debtors have agreed to provide to the Prepetition Secured Parties the following (collectively, the “**Prepetition Secured Parties’ Adequate Protection Obligations**”):

**Adequate Protection:** (a) Adequate Protection Replacement Liens. To the extent of the diminution in value of the respective interests of the Prepetition Secured Parties in the respective Prepetition Collateral, including, without limitation, the Cash Collateral, from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtors of the applicable Prepetition Collateral, including, without limitation, the Cash Collateral, the granting of the DIP Liens, the subordination of the Prepetition Liens thereto and to the Carve-Out and the imposition or enforcement of the automatic stay of Section 362(a) (collectively, “**Diminution in Value**”) (in addition to (but without duplication of) any claim for Diminution in Value that may arise during the course of the Chapter 11 Cases, the First Lien Claimholders shall have (solely upon entry of the Final Order) a valid, binding and enforceable claim for Diminution in Value equal to the product of (x) 1 minus the quotient of the U.S. Cash Consideration and the

Cash Consideration (in each case, as defined in the Sale Support Agreement) and (y) the sum of the amounts set forth in Section 4(b) of the Sale Support Agreement that are authorized to be paid in accordance with the Sale Order), the First Lien Agent and Second Lien Agent, as applicable, for the benefit of the First Lien Claimholders and Second Lien Claimholders, as applicable, are hereby granted, subject to the terms and conditions set forth below, pursuant to Sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, replacement Liens upon all property of the Debtors, now existing or hereinafter acquired, as more fully described in the Interim Order (collectively, the “**Adequate Protection Collateral**” and such adequate protection replacement liens, the “**Adequate Protection Replacement Liens**”), which shall be subject and subordinate only to (i) the DIP Liens, (ii) the Prepetition Prior Liens, (iii) the payment of the Carve-Out and (iv) with respect to the Adequate Protection Replacement Liens granted to the Second Lien Agent for the benefit of the Second Lien Claimholders only, the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders. For the avoidance of doubt, the Adequate Protection Replacement Liens granted to the Second Lien Agent for the benefit of the Second Lien Claimholders shall be subordinated to the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders on the same basis as the Second Priority Liens are subordinated to the First Priority Liens under the Intercreditor Agreement

- (b) Super-Priority Administrative Claim. To the extent of Diminution in Value, the First Lien Claimholders and Second Lien Claimholders are granted allowed super-priority administrative Adequate Protection Super-Priority Claims, against each of the Debtors pursuant to Sections 361, 363(e), 364(d)(1) and 507(b) of the Bankruptcy Code which shall have priority, subject only to (i) the DIP Super-Priority Claims, (ii) the payment of the Carve-Out and (iii) with respect to the Adequate Protection Super-Priority Claims granted to the Second Lien Claimholders, the Adequate Protection Super-Priority Claims granted to the First Lien Claimholders, over all administrative expense claims, adequate protection and other diminution claims, unsecured claims and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or



attachment. The Adequate Protection Super-Priority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, provided, however, that (i) to the extent the Cash Collateral Termination Date shall have occurred, the Maximum Carve-Out Amount shall be funded and the Intercompany Loan shall be paid in full (including all accrued and previously capitalized interest thereon) in cash before any payments shall be made on account of the Adequate Protection Super-Priority Claims and (ii) to the extent the Cash Collateral Termination Date shall not have occurred, all amounts set forth in section 4(b) of the Sale Support Agreement shall be funded (provided, the Sale shall have been consummated) and the Intercompany Loan shall be paid in full (including all accrued and previously capitalized interest thereon) in cash before any payments shall be made on account of the Adequate Protection Super-Priority Claims, in each case, in accordance with the terms of the Interim Order. Other than as provided in the Interim Order with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the Adequate Protection Replacement Liens and the Adequate Protection Super-Priority Claims.

- (c) Adequate Protection Payments, Professional Fees and Information. The Debtors will (i) within 3 Business Days of the date of entry of the Interim Order pay to the First Lien Agent a cash amount equal to \$973,838.09, (ii) timely pay in cash all reasonable out of pocket fees, costs and expenses of the First Lien Agent (including, without limitation, payment in advance of the agency fee required to be paid pursuant to Section 2.11(c) of the First Lien Credit Agreement) and its professionals, including, without limitation, Morgan, Lewis & Bockius LLP, as financing counsel, Wachtell, Lipton, Rosen & Katz, as special restructuring and bankruptcy counsel, DLA Piper LLP, as local counsel, one foreign counsel and one financial advisor (collectively, the **"First Lien Professional Fees"**), in each case, on a regular monthly basis during the

Chapter 11 Cases, without further notice, motion or application to, order of, or hearing before, the Court provided that after consummation of the Sale, if the proceeds of the Sale are not sufficient to satisfy the claims of the First Lien Lenders in full, the First Lien Agent shall pay such fees and expenses from proceeds of the Sale that would otherwise be distributed to the First Lien Agent for the benefit of the First Lien Lenders withheld for such purpose and (iii) deliver to the First Lien Agent, the Second Lien Agent and their respective advisors all information, reports, documents and other material that they may reasonably request, either directly or through their professionals (it being understood that the First Lien Agent, the Second Lien Agent and their respective advisors shall be permitted in their sole discretion to distribute such information, reports, documents and other material to the First Lien Claimholders and Second Lien Claimholders, as applicable, upon request).

- (d) Right to Seek Additional Adequate Protection. Subject to the terms of the Intercreditor Agreement, any Prepetition Secured Party may request further or different adequate protection, and the Debtors or any other party in interest may (subject to the Intercreditor Agreement) contest any such request. Any such further or different adequate protection shall at all times be subordinate and junior to the DIP Super-Priority Claims and DIP Liens of the Postpetition Lender.

35. The First Lien Agent and the Majority First Lien Lenders have consented to the foregoing arrangements to provide the Prepetition Secured Parties' Adequate Protection. Moreover, the Majority First Lien Lenders have agreed that, except for the one-time \$973,838.09 adequate protection payment, payments servicing the First Lien Obligations, including payment of currently accruing interest and fees (except as set forth above), will not be part of the Adequate Protection received by the Prepetition Secured Parties.

**E. Approved Budget**

36. The consensual use arrangement of Prepetition Collateral described in the Interim Order is governed by the Approved Budget attached to the Interim Order as Exhibit A, which is

divided into two parts. From the Petition Date through and including January 27, 2012, the budget consists of a rolling weekly cash flow budget (the “**Pre-Sale Approved Budget**”). From and including January 28, 2012 through and including June 30, 2012, the budget consists of a rolling monthly cash flow budget (the “**Wind-Down Approved Budget**”). In each case, the Approved Budget reflects on a line-item basis the Debtors’ projected (1) aggregate cash receipts, (2) disbursements (including professional fees and capital expenditures) and (3) cash on hand (collectively, “**Aggregate Liquidity**”), on a weekly or monthly basis as applicable. If the Debtors have filed a plan of reorganization or liquidation that is reasonably acceptable to the First Lien Agent and Approving Majority First Lien Lenders and the Court has entered an order approving the Debtors’ related disclosure statement on or before June 30, 2012, and the Debtors are using reasonable best efforts to confirm such plan, then the Wind-Down Approved Budget will automatically be extended from June 30, 2012 through July 31, 2012. Furthermore, in the event the Wind-Down Approved Budget is extended through July 31, 2012, the Debtors are prohibited from using Prepetition Collateral during the extension in excess of the amounts provided under the Wind-Down Approved Budget through June 30, 2012. The Approved Budget may be amended with the consent of the First Lien Agent and the Approving Majority First Lien Lenders.

### **Basis for Relief**

#### **F. Approval Pursuant to Section 364(c) of the Bankruptcy Code**

37. The Debtors propose to obtain financing under the Intercompany Loan by providing security interests and liens as set forth above pursuant to Sections 364(c) and (d) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under Section 364(c) is a finding, made after notice and hearing, that a debtor is “unable to obtain unsecured

credit allowable under Section 503(b)(1) of the [the Bankruptcy Code] . . . ” 11 U.S.C. § 364(c). Financing pursuant to Section 364(d) of the Bankruptcy Code is appropriate when the trustee or debtor-in-possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. See In re Ames Dep’t Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made reasonable effort to seek other sources of financing under Sections 364(a) and (b) of the Bankruptcy Code); In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under Section 364(c)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

38. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under Section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (a) the debtor is unable to obtain unsecured credit under Section 364(b), i.e., by allowing a lender only an administrative claim;
- (b) the credit transaction is necessary to preserve the assets of the estate; and
- (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Ames Dep’t Stores, 115 B.R. at 37-39; see also In re St. Mary Hospital, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); In re Crouse Group, Inc., 71 B.R. at 549.

39. Prior to negotiating the Intercompany Loan, the Debtors considered other sources of postpetition financing to determine whether they could obtain debtor in possession financing on better terms. The First Lien Lenders were unwilling to subordinate their First Priority Lien to financing from any other source than the Postpetition Lender. Based on current capital markets conditions, after consultation with their investment bankers, the Debtors determined that postpetition financing on an unsecured basis or on a junior priority basis to the Prepetition

Secured Parties would be unobtainable. Without the postpetition financing, the Debtors would not be able to ensure that they would be able to continue operations without interruption. The failure to continue to operate pending the Sale would significantly impair the value of the Debtors' assets and the Debtors' ability to maximize value through the proposed Sale or any other restructuring. Given the Debtors' circumstances and the volatile conditions and lack of liquidity in the capital markets, the Debtors believe that the terms of the Intercompany Loan are fair, reasonable and adequate, all as more fully set forth below.

**G. Approval of Priming Liens and Adequate Protection Pursuant to Section 364(d) of the Bankruptcy Code**

40. If a debtor is unable to obtain credit under the provisions of Section 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a "priming lien." 11 U.S.C. § 364(d). The DIP Liens are valid, binding, enforceable and fully perfected as of the date the Interim Order is entered, and will prime and be senior in all respects to the Prepetition Liens and the Adequate Protection Replacement Liens (each as defined in the Interim Order) pursuant to Section 364(d) of the Bankruptcy Code, and are subject only to the Carve-Out and the Prepetition Prior Liens. The DIP Liens do not prime any Prepetition Prior Liens.

41. Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of postpetition debt secured by senior or "priming" liens, provides that the court may, after notice and a hearing, authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (a) the trustee is unable to obtain credit otherwise; and
- (b) there is adequate protection of the interest of the holder of the lien on the property of the estate on

which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d).

42. The Bankruptcy Code does not explicitly define “adequate protection.” Section 361 of the Bankruptcy Code does, however, provide three nonexclusive examples of what may constitute “adequate protection” of an interest of an entity in property under Sections 362, 363 or 364 of the Bankruptcy Code:

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the...use...under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity’s interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such...use...or grant results in a decrease in the value of such entity’s interest in such property; or
- (3) granting such other relief...as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.

11 U.S.C. § 361.

43. Similarly, the Bankruptcy Code does not expressly define the nature and extent of the “interest in property” of which a secured creditor is entitled to adequate protection under Section 361, 363, and 364. However, the Bankruptcy Code plainly contemplates that a qualifying interest demands protection only to the extent that the use of the creditor’s collateral will result in a decrease in “the value of such entity’s interest in such property.” See 11 U.S.C. § 361. Indeed, courts have repeatedly held that the purpose of adequate protection “is to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization.” In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); see also In re Mosello, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996) (same); Bank of New England v. BWL, Inc., 121 B.R. 413, 418 (D. Me. 1990) (same); In re Beker Indus. Corp., 58 B.R. 725,

736 (Bankr. S.D.N.Y. 1986) (focus of adequate protection “is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”).

44. The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. See In re Mosello, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996). “Its application is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process.” Id. (quoting In re Beker Indus. Corp., 58 B.R. at 736). The Debtors have concluded that financing comparable to that provided by the Postpetition Lender under the Intercompany Loan is currently unobtainable.

45. In accordance with Section 364(d) of the Bankruptcy Code, and consistent with the purposes underlying the provision of adequate protection, the proposed Interim Order provides the Prepetition Lenders with the Adequate Protection as described above, including: (a) adequate protection liens, (b) adequate protection superpriority claims, and (c) payment of certain professional fees incurred by the First Lien Agent. Moreover, the Debtors anticipate a Sale of all or substantially all of the their assets, subject to a marketing and auction process to determine the highest or otherwise best offer. Subject to the terms and conditions of the Sale Support Agreement, the net proceeds of Sale will be used to, among other things, pay the Prepetition Obligations on the Sale consummation date. This process further provides adequate protection to the Prepetition Secured Parties since the Debtors are simply seeking to utilize the Prepetition Secured Parties’ cash collateral to monetize their non-cash collateral.

46. The First Lien Agent and the Majority First Lien Lenders have consented to the foregoing Adequate Protection arrangements and the priming of their respective liens.

**C. Use of Cash Collateral**

47. Section 363 of the Bankruptcy Code governs the Debtors' use of property of the estates.<sup>10</sup> Section 363(c)(1) of the Bankruptcy Code provides that:

If the business of the debtor is authorized to be operated under Section . . . 1108 . . . of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

48. Section 363(c)(2) of the Bankruptcy Code, however, provides an exception with respect to "cash collateral" to the general grant of authority to use property of the estate in the ordinary course set forth in Section 363 of the Bankruptcy Code. Specifically, a trustee or debtor in possession may not use, sell, or lease "cash collateral" under subsection (c)(1) unless:

- (A) each entity that has an interest in such collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of [Section 363 of the Bankruptcy Code].

11 U.S.C. § 363(c)(2).

49. The Debtors submit that, under the circumstances here, their request to use Cash Collateral should be approved. The First Lien Agent and the Majority First Lien Lenders have consented to the use of Cash Collateral provided that the relief requested herein is granted.

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<sup>10</sup> Pursuant to Section 1107 of the Bankruptcy Code, a debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with Section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).



**D. No Comparable Alternative to the Intercompany Loan is Currently Available**

50. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by Sections 364(c) and (d) of the Bankruptcy Code. See In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986); see also In re Plabell Rubber Prods., Inc., 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). The Debtors determined, after consultation with their investment bankers, that no alternative postpetition financing could be obtained on terms equal to or more favorable than the Intercompany Loan. The Debtors believe that the Majority First Lien Lenders would not consent to their liens being primed by any postpetition credit facility other than the Intercompany Loan, and that a non-consensual priming fight would be required in order to obtain a different postpetition credit facility. Accordingly, the Debtors determined that the financing provided under the terms of the Intercompany Loan was the only financing available on comparable terms. Thus, in addition to evidence to be introduced at the Interim Hearing if necessary, the Debtors submit that the requirements of Sections 364(c) and (d) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtors is satisfied.

**E. The Intercompany Loan Terms are Fair, Reasonable and Adequate**

51. The proposed terms of the Intercompany Loan are fair, reasonable and adequate given today’s market and the facts of these cases. The purpose of the Intercompany Loan is to provide the Debtors with sufficient working capital and liquidity to bridge the Debtors to consummation of a going-concern sale of their assets pursuant to Section 363 of the Bankruptcy Code.

52. The proposed Intercompany Loan provides that the security interests and administrative expense claims granted to the Postpetition Lender and Prepetition Secured Parties

are subject to the Carve-Out. In In re Ames Dep't Stores, 115 B.R. 34 (Bankr. S.D.N.Y. 1990), the court found that such "carve-outs" are not only reasonable, but are necessary to ensure that official committees and the debtor's estate will be assured of the assistance of counsel. Id. at 40.

**F. The Section 506(c) Waiver in the Final Order Should Be Approved**

53. The Court should approve the Debtors' waiver, in the Final Order, of any right to surcharge any or all of the Prepetition Secured Parties or the Postpetition Lender, their respective claims, or their respective collateral. Such waivers and provisions are standard and customary under financings between sophisticated parties. As one court noted in discussing the later enforceability of such waivers, "the Trustee and Debtors-in-Possession in this case had significant interests in asserting claims under § 506(c) and have made use of their rights against the Lender under § 506(c) by waiving them in exchange for concessions to the estates (including a substantial carve-out for the benefit of administrative creditors)." In re Molten Metal Technology, Inc., 244 B.R. 515, 527 (Bankr. D. Mass. 2000). See also In re Nutri/System of Florida Assocs., 178 B.R. 645, 650 (E.D. Pa. 1995) (noting that debtor had waived § 506(c) rights in obtaining debtor in possession financing); In re Telesphere Communications, Inc., 179 B.R. 544, 549 (Bank. N.D. Ill. 1994) (approving settlement between debtor and certain lenders wherein debtor waived certain rights (including 506(c) rights) against the lenders in exchange for valuable consideration).

54. The waiver of surcharge rights is particularly appropriate where, as here, it is tied to the benefit to be received from the Prepetition Secured Parties and the Postpetition Lender by allowing the Debtors to continue to use Cash Collateral and the proceeds of the Collateral to fund the administration of the Debtors' estates in accordance with the Approved Budget. See In re Lunan Family Restaurants Ltd. P'ship, 192 B.R. 173, 178 (N.D. Ill. 1996) ("The burden of proof

is on any proponent of § 506(c) treatment, who must show by a preponderance of evidence that (1) the expenditure was necessary, (2) the amounts were reasonable, and (3) the secured creditor was the party primarily benefited by the expenditure].”) (citing In re Flagstaff, 739 F.2d 73, 77 (2d Cir. 1984) and New Orleans Public Service Inc. v. Delta Towers, Ltd. (In re Delta Towers), 112 B.R. 811, 815 (E.D. La. 1990), rev’d on other grounds sub nom., In re Delta Towers, 924 F.2d 74 (5th Cir. 1991).

**G. Modification of Automatic Stay**

55. The Intercompany Loan contemplates a modification of the automatic stay to the extent applicable and necessary, to permit the parties to implement the terms of the DIP Orders. In addition, the consensual Cash Collateral use arrangement requires a modification of the automatic stay so that, upon the occurrence and during the continuance of an Event of Default, the Postpetition Lender and Prepetition Secured Parties may exercise all rights and remedies as set forth in the Interim Order. Provisions of this kind are standard in debtor-in-possession financing and are reasonable under the circumstances.

**H. Interim Approval Should Be Granted**

56. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to Section 364 of the Bankruptcy Code or to use cash collateral pursuant to Section 363 may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor’s estate.

57. The Debtors request that the Court hold and conduct the Interim Hearing to consider entry of the Interim Order authorizing the Debtors from and after entry of the Interim

Order until the Final Hearing to receive the loan contemplated by the Intercompany Loan and to use Cash Collateral. This relief will enable the Debtors to operate their business in a manner that will permit them to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

**I. Notice Procedures and the Final Hearing**

58. Pursuant to Local Rule 4001-2(c), the Final Order may only be entered after notice and a hearing, and a hearing to consider the Final Order is ordinarily not held until at least ten (10) days after the organizational meeting of the creditors' committee. The Debtors shall, within three business days of the entry of the Interim Order by the Court, serve by overnight mail, a copy of the Interim Order and a notice of the Final Hearing (the "**Final Hearing Notice**") to consider entry of the Final Order on the date established by the Court.

59. The Debtors respectfully request that the Court schedule the Final Hearing on this Motion no later than thirty-five (35) days after the Petition Date. Such relief is necessary in order to maintain ongoing operations and avoid immediate and irreparable harm and prejudice to the Debtors' respective estates.

**Notice**

60. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. The Debtors, through the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the First Lien Agent; (c) special restructuring and bankruptcy counsel to the First Lien Agent; (d) counsel to the Second Lien Agent; (e) the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors,

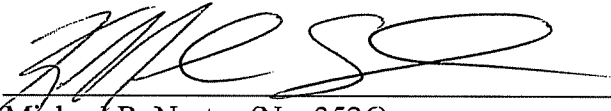
as filed with the Debtors' chapter 11 petitions; (g) the Food and Drug Administration; (h) the Internal Revenue Service; (i) the U.S. Public Health Service; (j) the Centers for Medicare and Medicaid Services; (k) all parties requesting notice pursuant to Bankruptcy Rule 2002; and (l) each entity with an interest in the Prepetition Collateral. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

61. A copy of the Motion is available on the Court's website: [www.deb.uscourts.gov](http://www.deb.uscourts.gov). Additional copies of the Motion are available for free on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., at [www.bmcgroup.com/graceway](http://www.bmcgroup.com/graceway), or can be requested by calling (800) 655-1129 from within the United States or +1 310 321 5555 if calling from outside the United States.

WHEREFORE, the Debtors respectfully request that this Court (i) enter the Interim Order, substantially in the form attached hereto as Exhibit A; (ii) after the Final Hearing, enter the Final Order substantially in the form that shall be filed with the Court; and (iii) grant such other and further relief as this Court deems appropriate.

Dated: September 29, 2011  
Wilmington, Delaware

Respectfully Submitted,



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PROPOSED ATTORNEYS FOR DEBTORS AND  
DEBTORS-IN-POSSESSION

**Exhibit A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (\_\_\_)

Joint Administration Requested

**Related Docket No.** \_\_\_\_

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO UTILIZE CASH COLLATERAL  
PURSUANT TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO  
PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND  
364; (III) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING  
PURSUANT TO 11 U.S.C. § 364 AND (IV) SCHEDULING A FINAL HEARING  
PURSUANT TO BANKRUPTCY RULE 4001**

***(“Interim DIP Order”)***

Upon the motion, dated September 29, 2011, (the “***DIP Motion***”), of Graceway Pharma Holding Corp. (“***Parent***”), Graceway Holdings, LLC (“***Holdings***”), Graceway Pharmaceuticals, LLC (the “***Borrower***”), and the other debtors in possession (collectively, the “***Debtors***”) in the above-referenced Chapter 11 cases (the “***Chapter 11 Cases***” and each of the Chapter 11 Cases upon either appointment of any trustee or any other estate representative or conversion to a case under Chapter 7 of the Bankruptcy Code (as defined below) and any other proceedings related to the Chapter 11 Cases, a “***Successor Case***”), seeking entry of an interim order (this “***Interim Order***”) pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(3), 364(d)(1), 364(e), 507 and 552 of Chapter 11 of title 11 of the United States Code (as amended, the “***Bankruptcy***

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620.



*Code*”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2002-1 and 4001-2 of the Local Bankruptcy Rules for the District of Delaware (the “*Local Rules*”), that, among other things:

(i) authorizes the Debtors to use Prepetition Collateral (as defined below), including, without limitation, “cash collateral,” as such term is defined in Section 363 of the Bankruptcy Code (the “*Cash Collateral*”), in which the Prepetition Secured Parties (as defined below) have a Lien or other interest, whether existing on the Petition Date (as defined below), arising pursuant to this Interim Order or otherwise;

(ii) authorizes the Borrower to obtain, and authorizes each of the other Debtors (other than Parent) unconditionally to guarantee, jointly and severally, the Borrower’s obligations in respect of, senior secured postpetition financing, which if approved would consist of \$6,000,000 in aggregate principal amount of intercompany term loans (the “*Intercompany Loan*”) from Graceway Canada Company (“*Graceway Canada*” and in its capacity as lender under the Intercompany Loan, the “*Postpetition Lender*”) to the Borrower;

(iii) grants, as of the Petition Date and in accordance with the relative priorities set forth herein, the Prepetition Secured Parties’ Adequate Protection (as defined below);

(iv) authorizes the Borrower and each of the other Debtors to grant to the Postpetition Lender the DIP Protections (as defined below);

(v) modifies the automatic stay imposed by Section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and subject in all respects to the Debtors’ rights under paragraph 14 herein;

(vi) schedules a final hearing on the DIP Motion to be held within thirty-five (35) days after the Petition Date (the “*Final Hearing*”) to consider entry of a final order

acceptable in form and substance to the First Lien Agent (as defined below) and Majority First Lien Lenders (as defined below), which grants all of the relief requested in the DIP Motion on a final basis (the “**Final Order**”); and

(vii) waives any applicable stay (including under Bankruptcy Rule 6004) and provides for immediate effectiveness of this Interim Order.

Having considered the DIP Motion, the *Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”) and the evidence submitted or proffered at the hearing to consider the entry of this Interim Order (the “**Interim Hearing**”); and in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and Local Rules 4001-2 and 2002-1, notice of the DIP Motion and the Interim Hearing having been provided in a sufficient manner; an Interim Hearing having been held and concluded on September 30, 2011; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for the continued operation of the Debtors’ business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED<sup>2</sup>, that:**

A. **Petition Date.** On September 29, 2011, (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (this “**Court**”). The Debtors have continued in the management and operation of their business and properties as debtors-in-

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<sup>2</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors (to the extent such committee is appointed, the “***Committee***”), trustee, or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue.** This Court has core jurisdiction over the Chapter 11 Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue for the Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and Local Rules 2002-1 and 4001-2.

C. **Notice.** The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001 and Local Rule 4001-2(b). Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, on September 29, 2011, to certain parties in interest, including: (i) the Office of the United States Trustee for the District of Delaware, (ii) the Internal Revenue Service, (iii) those entities or individuals included on the Debtors’ list of 30 largest unsecured creditors on a consolidated basis, (iv) the First Lien Agent (as defined below), (v) financial counsel and special restructuring and bankruptcy counsel to the First Lien Agent, (vi) the Second Lien Agent (as defined below), (vii) counsel to the Second Lien Agent, (viii) counsel to the administrative agent for the lenders under the Debtors’ prepetition unsecured mezzanine credit facility, (ix) the United States Food and Drug Administration, (x) any entity with an interest in the Adequate Protection Collateral (as defined below) known to the Debtors and (xi) all parties requesting notice pursuant to Bankruptcy Rule 2002. The aforementioned notices are appropriate under the circumstances, and no other or further notice of

the DIP Motion, the relief requested therein and the Interim Hearing is required for entry of this Interim Order.

D. **Debtors' Stipulations Regarding the Prepetition Secured Credit Facilities.**

Without prejudice to the rights of parties in interest to the extent set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge and agree (paragraphs D(i) through D(ix) hereof shall be referred to herein collectively as the "***Debtors' Stipulations***") as follows:

(i) **First Lien Credit Facility.** Pursuant to that certain First Lien Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "***First Lien Credit Agreement***"), among, *inter alia*, Holdings, the Borrower, the lenders party thereto (collectively, the "***First Lien Lenders***"), and Bank of America, N.A. ("***BofA***"), as administrative agent for the First Lien Lenders and collateral agent for the First Lien Claimholders (as defined in the Intercreditor Agreement (as defined below), without giving effect to any cap provided for therein) (BofA, in such capacity, the "***First Lien Agent***"), Swing Line Lender and L/C Issuer, the First Lien Agent, the First Lien Lenders, the Swing Line Lender and the L/C Issuer agreed to extend certain loans to, and issue letters of credit for the account of, the Borrower. The First Lien Credit Agreement, along with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the First Lien Credit Documents (as defined in the Intercreditor Agreement), are collectively referred to herein as the "***First Lien Documents***" (as the same may be amended, restated, supplemented or otherwise modified from time to time). All obligations of the Debtors arising under the First Lien Credit Agreement, together with any other First Lien Obligations (as defined in the Intercreditor Agreement without giving effect to any cap provided for therein), shall collectively be referred to herein as the "***First Lien Obligations.***"

(ii) Second Lien Credit Facility. Pursuant to that certain Second Lien Credit Agreement dated as of May 3, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the “**Second Lien Credit Agreement**”), among, *inter alia*, Holdings, the Borrower, the lenders party thereto (collectively, the “**Second Lien Lenders**”) and Deutsche Bank Trust Company Americas (“**DB**”), as administrative agent for the Second Lien Lenders and collateral agent for the Second Lien Claimholders (as defined in the Intercreditor Agreement) (the Second Lien Claimholders and First Lien Claimholders collectively, the “**Prepetition Secured Parties**”) (DB, in such capacity, the “**Second Lien Agent**”), the Second Lien Agent and the Second Lien Lenders agreed to extend certain loans to the Borrower. The Second Lien Credit Agreement, along with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the Second Lien Credit Documents (as defined in the Intercreditor Agreement), are collectively referred to herein as the “**Second Lien Documents**” (as the same may be amended, restated, supplemented or otherwise modified from time to time). All obligations of the Debtors arising under the Second Lien Credit Agreement, together with any other Second Lien Obligations (as defined in the Intercreditor Agreement), shall collectively be referred to herein as the “**Second Lien Obligations**” and, together with the First Lien Obligations, the “**Prepetition Obligations**.”

(iii) First Priority Liens and First Lien Collateral. Pursuant to the Collateral Documents (as such documents are amended, restated, supplemented or otherwise modified from time to time, the “**First Lien Collateral Documents**”), by and between each of the Debtors (other than Parent) and the First Lien Agent, each Debtor (other than Parent) granted to the First Lien Agent, for the benefit of the First Lien Claimholders, to secure the First Lien Obligations, a valid, binding, enforceable and perfected first priority continuing security interest in substantially

all of such Debtor's assets and property (which for the avoidance of doubt includes Cash Collateral) and all proceeds thereof, collateral therefor, income, royalties and other payments due and payable with respect thereto and supporting obligations relating thereto, in each case whether then owned or existing or thereafter acquired or arising (the "**First Priority Liens**"). All collateral granted or pledged by the Debtors (other than Parent) pursuant to any First Lien Collateral Document or any other First Lien Document, including, without limitation, the Collateral (as defined in the First Liens Credit Agreement), and all prepetition and postpetition proceeds thereof shall collectively be referred to herein as the "**First Lien Collateral.**"

(iv) Second Priority Liens and Second Lien Collateral. Pursuant to the Collateral Documents (as defined in the Second Lien Credit Agreement) (as such documents are amended, restated, supplemented or otherwise modified from time to time, the "**Second Lien Collateral Documents**"), by and between each of the Debtors (other than Parent) and the Second Lien Agent, each Debtor (other than Parent) granted to the Second Lien Agent, for the benefit of the Second Lien Claimholders, to secure the Second Lien Obligations, a valid, binding, enforceable and perfected second priority continuing security interest in substantially all of such Debtor's assets and property (which for the avoidance of doubt includes Cash Collateral) and all proceeds thereof, collateral therefor, income, royalties and other payments due and payable with respect thereto and supporting obligations relating thereto, in each case whether then owned or existing or thereafter acquired or arising (the "**Second Priority Liens**" and, together with the First Priority Liens, the "**Prepetition Liens**"). All collateral granted or pledged by the Debtors (other than Parent) pursuant to any Second Lien Collateral Document or any other Second Lien Document, including, without limitation, the Collateral (as defined in the Second Lien Credit Agreement), and all prepetition and postpetition proceeds thereof shall collectively be referred to

herein as the “*Second Lien Collateral*” and, together with the First Lien Collateral, the “*Prepetition Collateral*.”

(v) Intercreditor Agreement. Pursuant to the Intercreditor Agreement, dated as of May 3, 2007 (the “*Intercreditor Agreement*” and, together with the First Lien Documents and the Second Lien Documents, the “*Prepetition Documents*”), among Holdings, the Borrower, the First Lien Agent, the Second Lien Agent and BofA as Control Agent, the Second Priority Liens are subject and subordinate on the terms contained in the Intercreditor Agreement to the First Priority Liens.

(vi) First Priority Liens and First Lien Obligations. (I) The First Priority Liens (a) are valid, binding, enforceable, and perfected Liens that have attached to the First Lien Collateral, (b) were granted to, or for the benefit of, the First Lien Claimholders, as applicable, for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, or subordination or other legal or equitable relief adversely affecting the First Priority Liens, in each case, pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein) and (d) are subject and subordinate in all respects only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below) and (C) the Prepetition Prior Liens (as defined below) and (II) (w) the First Lien Obligations constitute legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable First Lien Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses or counterclaims to any of the First Lien Obligations exist, (y) no portion of the First Lien Obligations or any payments made to any or all of the First Lien Claimholders is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or

any other “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (z) the Guaranty of each Guarantor continues in full force and effect notwithstanding any use of the Prepetition Collateral, including, without limitation the Cash Collateral, permitted hereunder, or the Intercompany Loan.

(vii) Second Priority Liens and Second Lien Obligations. (I) The Second Priority Liens (a) are valid, binding, enforceable, and perfected Liens that have attached to the Second Lien Collateral, (b) were granted to, or for the benefit of, the Second Lien Claimholders, as applicable, for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, or subordination or other legal or equitable relief adversely affecting the First Priority Liens, in each case, pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein) and (d) are subject and subordinate in all respects only to (A) the DIP Liens, (B) the Carve-Out, (C) the Prepetition Prior Liens (as defined below) and (D) the First Priority Liens (pursuant to the terms of the Intercreditor Agreement), and (II) (w) the Second Lien Obligations constitute legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Second Lien Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses or counterclaims to any of the Second Lien Obligations exist, (y) no portion of the Second Lien Obligations or any payments made to any or all of the Second Lien Claimholders is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or any other “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (z) the Guaranty (as defined in the Second Lien Credit Agreement) of each Guarantor (as defined in the Second Lien Credit Agreement)



continues in full force and effect notwithstanding any use of the Prepetition Collateral, including, without limitation the Cash Collateral, permitted hereunder, or the Intercompany Loan.

(viii) Amounts Owed under Prepetition Documents. As of the Petition Date, the Debtors were truly and justly indebted (i) to the First Lien Claimholders pursuant to the First Lien Documents, without defense, counterclaim or offset of any kind, in respect of loans made and letters of credit issued by the First Lien Agent, the First Lien Lenders, the L/C Issuer and the Swing Line Lender in the aggregate principal amount of not less than \$430,698,397.58, including, without limitation, an undrawn letter of credit in the amount of \$350,000, *plus* all accrued or, subject to Section 506(b) of the Bankruptcy Code, hereafter accruing, and unpaid interest thereon, and any additional fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the First Lien Documents) now or hereafter due under the First Lien Credit Agreement and the other First Lien Documents and (ii) to the Second Lien Claimholders pursuant to the Second Lien Documents, without defense, counterclaim or offset of any kind, in respect of loans made by the Second Lien Agent and Second Lien Lenders in the aggregate principal amount of not less than \$330,000,000, *plus* all accrued and unpaid interest thereon and any additional fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Second Lien Documents), in each case, due under the Second Lien Credit Agreement and the other Second Lien Documents as of the Petition Date.

(ix) Release of Claims. Each Debtor and its estate shall be deemed to have forever waived, discharged, and released the First Lien Agent, First Lien Claimholders, the Second Lien Agent and the Second Lien Claimholders, together with their respective affiliates,

agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the “*Secured Party Releasees*”) of any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment, or other offset rights against any and all of the Secured Party Releasees, whether arising at law or in equity, with respect to the First Lien Obligations, First Priority Liens, Second Lien Obligations and Second Priority Liens, as applicable, including, without limitation, (I) any recharacterization, subordination, avoidance, or other claim arising under or pursuant to Section 105 or Chapter 5 of the Bankruptcy Code, or under any other similar provisions of applicable state or federal law, and (II) any right or basis to challenge or object to the amount, validity, or enforceability of the First Lien Obligations or Second Lien Obligations, as applicable, or the validity, enforceability, priority, perfection or non-avoidability of the First Priority Liens or Second Priority Liens, as applicable, securing the First Lien Obligations or Second Lien Obligations, as applicable.

**E. Need to Use the Prepetition Collateral (including, without limitation, the Cash Collateral) and to Obtain Intercompany Loan.**

(i) The Debtors have an immediate need to use the Prepetition Collateral, including, without limitation, the Cash Collateral, and obtain the Intercompany Loans, to, among other things, permit the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs. The Debtors’ access to sufficient working capital and liquidity through the use of the Cash Collateral and borrowing the Intercompany Loan is of vital importance and in the best interest of the Debtors’ estates.

(ii) As set forth in the DIP Motion and in the First Day Declaration in support thereof, the Debtors are unable to obtain financing on more favorable terms from a source other

than the Postpetition Lender. The Debtors are unable to obtain adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under Sections 364(c) and (d) of the Bankruptcy Code without (i) granting to the Postpetition Lender the rights, remedies, privileges, benefits and protections provided herein, including, without limitation, the DIP Liens and the DIP Super-Priority Claims (as defined below, and together with the DIP Liens, the “*DIP Protections*”) and (ii) providing the Prepetition Secured Parties the adequate protection more fully described in paragraph F below.

F. **Adequate Protection for Prepetition Secured Parties.** The First Lien Agent and certain First Lien Lenders holding a majority of the First Lien Obligations and that have consented to the use of the Prepetition Collateral, including, without limitation, the Cash Collateral (the “*Majority First Lien Lenders*”), have negotiated in good faith regarding the Debtors’ use of the Prepetition Collateral, including, without limitation, the Cash Collateral, to fund the administration of the Debtors’ estates and maintain the continued operation of their businesses. The First Lien Agent and Majority First Lien Lenders have agreed to permit the Debtors to use the Prepetition Collateral, including, without limitation, the Cash Collateral, for the period through the Cash Collateral Termination Date (as defined below), subject to the terms and conditions set forth herein. In addition, the Intercompany Loan contemplated hereby provides for a priming of the Prepetition Liens pursuant to Section 364(d) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection set forth herein pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code for the Diminution in Value (as defined below) of the Prepetition Collateral. Based on the DIP Motion and on the record presented to this Court at the Interim Hearing, the terms of the proposed adequate protection

arrangements, the use of the Prepetition Collateral, including, without limitation, the Cash Collateral and the Intercompany Loan, in each case, contemplated hereby are fair and reasonable and reflect the Debtors' prudent exercise of business judgment.

G. **Limited Consent.** The consent of the First Lien Agent and Majority First Lien Lenders to (i) the priming of the First Priority Liens by the DIP Liens is limited to the financing presently before this Court, with Graceway Canada as lender, and shall not, and shall not be deemed to, extend to any other postpetition financing or to any modified version of the Intercompany Loan and (ii) the Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, is limited to use of the Prepetition Collateral, including, without limitation, the Cash Collateral, pursuant to the terms of this Interim Order and shall not, and shall not be deemed to, extend to any other use of the Prepetition Collateral, including, without limitation, the Cash Collateral. Nothing in this Interim Order, including, without limitation, any of the provisions herein with respect to adequate protection, shall constitute, or be deemed to constitute, a finding that the interests of the First Lien Agent or any First Lien Claimholder are or will be adequately protected with respect to any non-consensual postpetition financing or use of Prepetition Collateral, including, without limitation, the Cash Collateral.

H. **Section 552(b).** In light of the subordination of the Prepetition Liens to (i) in the case of the First Lien Claimholders, the Carve-Out and DIP Liens, and (ii) in the case of the Second Lien Claimholders, the Carve-Out, DIP Liens and Adequate Protection Replacement Liens (as defined below) granted to the First Lien Agent for the benefit of the First Lien Claimholders, each of the First Lien Claimholders and Second Lien Claimholders is entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply.

I. **Business Judgment and Good Faith Pursuant to Section 364(e).** Based on the record presented to this Court by the Debtors, it appears that:

(i) Graceway Canada has indicated a willingness to provide postpetition secured financing via the Intercompany Loan to the Borrower in accordance with this Interim Order.

(ii) The terms and conditions of the Intercompany Loan pursuant to this Interim Order are fair, reasonable and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and consideration.

(iii) The Intercompany Loan was negotiated in good faith among the Debtors and the Postpetition Lender and shall be deemed to have been extended by the Postpetition Lender for valid business purposes and uses and in good faith, as that term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by Section 364(e) of the Bankruptcy Code, and the DIP Liens and the DIP Super-Priority Claims shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event this Interim Order or any other order or any provision hereof or thereof is vacated, reversed, amended or modified, on appeal or otherwise.

J. **Relief Essential; Best Interest.** For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rule 4001-2(b). Absent granting the relief set forth in this Interim Order, the Debtors' estates and their ability successfully to operate their businesses will be immediately and irreparably harmed. Consummation of the Intercompany Loan and authorization of the use of Prepetition Collateral, including, without limitation, the Cash Collateral, in accordance with

this Interim Order is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties.

**NOW, THEREFORE**, on the DIP Motion and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the First Lien Agent, the Majority First Lien Lenders and the Postpetition Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Interim Order. Any objections to the DIP Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. **Use of the Prepetition Collateral (including, without limitation, the Cash Collateral) and Authorization to Incur Intercompany Loan.** To enable the Debtors to continue to operate their business, during the period from the entry of this Interim Order through and including the date of entry of the Final Order (the "*Interim Period*"), the Debtors are hereby authorized to use the Prepetition Collateral, including, without limitation, the Cash Collateral, and the Borrower is hereby authorized to borrow and use the proceeds of the Intercompany Loan, in each case, only in accordance with the terms and conditions of this Interim Order, including, without limitation, the Approved Budget and Budget Covenants (in each case, as defined below). Following the expiration of the Interim Period, the Debtors' authority to use the Prepetition Collateral, including, without limitation, the Cash Collateral, and the Borrower's authority to use the proceeds of the Intercompany Loan will, in each case, be governed by the terms and

conditions of the Final Order, including, without limitation, the Approved Budget and Budget Covenants. Any amount repaid under the Intercompany Loan may not be reborrowed.

3. **Approved Budget; Budget Covenants; Events of Default.**

(a) **Approved Budget.** Attached hereto as **Exhibit A** is (i) a rolling weekly cash flow budget from and including the Petition Date through and including January 27, 2012 (the “***Pre-Sale Approved Budget***”) and (ii) a rolling monthly cash flow budget from and including January 28, 2012 through and including June 30, 2012 (the “***Wind-Down Approved Budget***” and together with the Pre-Sale Approved Budget, the “***Approved Budget***”), in each case, (A) as may be amended or modified from time to time with the consent of the First Lien Agent and the Approving Majority First Lien Lenders (as defined below) and (B) reflecting on a line-item basis the Debtors’ projected (1) aggregate cash receipts, (2) disbursements (including, without limitation, professional fees and capital expenditures) and (3) cash on hand (collectively, “***Aggregate Liquidity***”), in each case, on a weekly or monthly basis, as applicable; provided, that if (x) the Debtors shall have filed plans of reorganization or liquidation in the Chapter 11 Cases that are reasonably acceptable to the First Lien Agent and Approving Majority First Lien Lenders and the Court shall have entered an order approving the Debtors’ disclosure statement in connection with such plans of reorganization or liquidation, in each case, on or before June 30, 2012 and (y) the Debtors are using reasonable best efforts to confirm such plans of reorganization or liquidation, the Wind-Down Approved Budget shall automatically be extended to include the period from and including June 30, 2012 to and including July 31, 2012; provided, however, that the Debtors shall be prohibited from using Prepetition Collateral, including, without limitation, Cash Collateral, pursuant to such extended Wind-Down Approved Budget in

excess of the amounts provided under the Wind-Down Approved Budget through and including June 30, 2012.

(b) Budget Covenants.

(i) From and including the Petition Date to and including January 27, 2012, for each 8-week period set forth in the Pre-Sale Approved Budget, tested weekly on a rolling basis by reference to the Pre-Sale Variance Report (as defined below), commencing with the 8-week period ending November 25, 2011, the aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees (as defined below) and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget and the amount budgeted therefor) and capital expenditures) by the Debtors shall not exceed one hundred fifteen percent (115%) of the aggregate amount of disbursements budgeted for each such 8-week period pursuant to the Pre-Sale Approved Budget. The Debtors shall provide to the Postpetition Lender, a duly appointed representative of Graceway Canada (the "**Canadian Representative**"), the First Lien Agent, the Second Lien Agent and the Committee, so as actually to be received on or prior to the Thursday following the end of each week, commencing with the Thursday following the fourth week after the Petition Date, a variance report (a "**Pre-Sale Variance Report**") certified by the chief executive officer, chief financial officer, treasurer, controller or general counsel of the Borrower (each an "**Authorized Officer**"), in form acceptable to the Postpetition Lender, the First Lien Agent and the Approving Majority First Lien Lenders, each, in their respective sole discretion, setting forth (A) the actual cash receipts and aggregate disbursements (including, without limitation, professional fees (including, without limitation, the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget) and capital expenditures) for such immediately preceding calendar



week and the Aggregate Liquidity as of the end of such calendar week (provided, however, that the initial Pre-Sale Variance Report provided by the Debtors in accordance with the terms of this Interim Order shall set forth actual cash receipts and aggregate disbursements (including, without limitation, professional fees (including, without limitation, the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget) and capital expenditures) for each immediately preceding calendar week since the Petition Date and the Aggregate Liquidity as of the end of each such calendar week) and (B) with respect to each 8-week period commencing with the 8-week period ending on the Friday of the eighth week after the Petition Date, the variance in dollar amounts and percentage terms of the actual aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Pre-Sale Approved Budget and the amount budgeted therefor) and capital expenditures) from those reflected for the corresponding period in the Pre-Sale Approved Budget.

(ii) From and including January 28, 2012 through and including June 30, 2012 (or, if the Wind-Down Approved Budget is extended in accordance with paragraph 3(a) above, July 31, 2012), for each period from January 28, 2012 through the end of each month thereafter set forth in the Wind-Down Approved Budget, tested at the end of each such month on a cumulative basis by reference to the Wind-Down Variance Report (as defined below) (it being understood that (I) the period from and including January 28, 2012 to and including January 31, 2012 shall be included in the period tested at the end of February 2012 and (II) an amount equal to the aggregate amount of all budgeted disbursements incurred but not paid during the 8-week period ending January 27, 2012 under the Pre-Sale Approved Budget (if any) shall be added to the "Corporate, Employee and Other Wind Down Expenses" line item in the Wind-Down

Approved Budget for the month of February 2012), the aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Wind-Down Approved Budget and the amount budgeted therefor) and capital expenditures) by the Debtors shall not exceed one hundred ten percent (110%) of the aggregate amount of disbursements budgeted for each such cumulative period pursuant to the Wind-Down Approved Budget. The Debtors shall provide to the Postpetition Lender, the Canadian Representative, the First Lien Agent, the Second Lien Agent and the Committee, so as actually to be received on or prior to the fourth business day immediately following the end of each month, commencing with the fourth business day of March 2012, a variance report (a "*Wind-Down Variance Report*") certified by an Authorized Officer, in form acceptable to the Postpetition Lender, the First Lien Agent and the Approving Majority First Lien Lenders, each, in their respective sole discretion, setting forth (A) the actual cash receipts and aggregate disbursements (including, without limitation, professional fees (including, without limitation, the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Wind-Down Approved Budget) and capital expenditures) for such immediately preceding month and the Aggregate Liquidity as of the end of such immediately preceding month, and (B) with respect to each such cumulative period, the variance in dollar amounts and percentage terms of the actual aggregate disbursements (including, without limitation, professional fees (but excluding the First Lien Professional Fees and, if any, the Committee's professional fees permitted under the Wind-Down Approved Budget and the amount budgeted therefor) and capital expenditures) from those reflected for the corresponding period in the Wind-Down Approved Budget.

(iii) The proceeds of the Intercompany Loan (subject to paragraph 5(a) below) and the Cash Collateral shall be used only as follows: (A) prior to the Cash Collateral Termination Date, solely for payment of the disbursements set forth in the Approved Budget subject to the terms and conditions of this Interim Order (including, without limitation, any variance permitted under this paragraph 3(b)) and (B) on or after the Cash Collateral Termination Date, solely (x) to fund (1) unpaid fees required to be paid in these Chapter 11 Cases to the clerk of this Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a), whether arising prior to or after the delivery of the Carve-Out Trigger Notice (as defined below), in an amount equal to \$201,250, (2) any unpaid amounts incurred and earned prior to the occurrence of the Cash Collateral Termination Date under each of the Debtors' Professionals Carve-Out Cap (as defined below) and Committee Professionals Carve-Out Cap (as defined below) and (3) the Debtors' Professionals Post Carve-Out Cap (as defined below) and Committee Professionals Post Carve-Out Cap (as defined below) (the aggregate of such amounts in clauses (1), (2) and (3) above, the "*Maximum Carve-Out Amount*") (it being understood that such pre-funded unpaid fees required to be paid in these Chapter 11 Cases to the clerk of this Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a), the pre-funded amounts incurred and earned prior to the occurrence of the Cash Collateral Termination Date under each of the Debtors' Professionals Carve-Out Cap and Committee Professionals Carve-Out Cap and the pre-funded amounts in respect of the Debtors' Professionals Post Carve-Out Cap and Committee Professionals Post Carve-Out Cap shall be escrowed in accordance with paragraph 8(e) below and paid to the applicable retained professionals only if and when such amounts are incurred, earned and allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code) and (y) to pay the First Lien Professional Fees.

The undertakings of the Debtors provided for in this paragraph 3(b) shall be collectively referred to herein as the “**Budget Covenants.**”

(c) Events of Default. Subject to paragraph 14(b) below, upon the occurrence of any Event of Default (as defined below), the consensual Cash Collateral use arrangement contained in this Interim Order shall terminate automatically without any further notice or action (including, without limitation, further notice, motion or application to, order of or hearing before this Court) unless the occurrence of such Event of Default is waived in writing at any time by at least two First Lien Lenders holding in aggregate a majority of the then outstanding First Lien Obligations held by the Consenting First Lien Lenders (as defined in the Sale Support Agreement, dated as of September 28, 2011 (the “**Sale Support Agreement**”), entered by and among the Debtors, Graceway Canada and the First Lien Lenders from time to time party thereto) (the “**Approving Majority First Lien Lenders**”). Each of the following events shall constitute an event of default (collectively, the “**Events of Default**”):

(i) the failure to obtain the entry by this Court of the Final Order on or within thirty-five (35) days after the Petition Date;

(ii) on or prior to January 27, 2012, with respect to each of the following line items in the Pre-Sale Approved Budget, the payment by the Debtors of any disbursements in excess of the cumulative amount budgeted for each such line item in the Pre-Sale Approved Budget plus fifteen percent (15%) of the cumulative amount of disbursements with respect to such line item: (i) “Payroll & Benefits”, (ii) “R&D, Licensing & Regulatory”, (iii) “Advertising & Promotions and Sales Expenses”, (iv) “Corporate, Occupancy, Utilities & Other Expenses”, (v) “Ropes & Gray”, (vi) “Edwards Angell Palmer & Dodge”, (vii) “Hogan Lovells US LLP”, (viii) “Other Non-Restructuring Professionals” and (ix) “CapEx”;

(iii) after January 27, 2012, with respect to the “Total Corporate, Employee and Other Wind Down Expenses” line item in the Wind-Down Approved Budget, the payment by the Debtors of any disbursements in excess of the cumulative amount budgeted for such line item in the Wind-Down Approved Budget plus ten percent (10%) of the cumulative amount of disbursements with respect to such line item;

- (iv) any violation of the Budget Covenants;
- (v) (A) the entry of an order by any court invalidating, disallowing or limiting in any respect, as applicable, either (1) the enforceability, priority, or validity of the First Priority Liens or Adequate Protection Replacement Liens, in each case, securing the First Lien Obligations or (2) any of the First Lien Obligations or Adequate Protection Super-Priority Claims (as defined below) granted to the First Lien Claimholders or (B) with respect to any of the foregoing, any Debtor's application for, consent to, or acquiescence in, any such relief;
- (vi) the incurrence by any Debtor after the Petition Date of indebtedness that is (A) secured by a security interest, mortgage or other Lien on all or any portion of the Prepetition Collateral which is equal or senior to any security interest, mortgage or other Lien of the First Lien Agent and the First Lien Claimholders, as applicable, or (B) entitled to priority administrative expense status which is equal or senior to that granted to the First Lien Agent and First Lien Claimholders, as applicable, herein, except, in each case, (x) any such indebtedness used to refinance the First Lien Obligations in full and (y) the Intercompany Loan;
- (vii) the entry of a final order by this Court (other than the Final Order) granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (A) to allow any creditor to execute upon or enforce a Lien on or security interest in any Prepetition Collateral with a value in excess of \$250,000 or (B) with respect to any Lien on or the granting of any Lien on any Prepetition Collateral to any state or local environmental or regulatory agency (in each case with a value in excess of \$250,000);
- (viii) reversal, vacatur, stay or modification (without the express prior written consent of the Postpetition Lender, the First Lien Agent and the Approving Majority First Lien Lenders, in their respective sole discretion) of this Interim Order;
- (ix) (A) the entry by this Court of an order, or the filing by the Debtors of a motion with this Court which seeks the entry of an order, accomplishing (x) the conversion of one or more of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or (y) the dismissal, termination, stay or modification of one or more of the Chapter 11 Cases or (B) with respect to any of the foregoing, any Debtor's application for, consent to, or acquiescence in, any such relief;
- (x) the entry by this Court of an order, or the filing by the Debtors of a motion with this Court, which seeks the entry of an order, accomplishing the appointment of an interim or permanent trustee, receiver or examiner with expanded powers to operate or manage the financial affairs, business or reorganization of any Debtor in one or more of the Chapter 11 Cases;
- (xi) any material breach by any Debtor of any of their obligations, representations, warranties or covenants set forth in this Interim Order (except as

covered by any other Event of Default under this paragraph 3(c)) or the Asset Purchase Agreement (as defined in the DIP Motion), as applicable, which material breach is not cured on or within five (5) Business Days after the giving of written notice of such breach to the Debtors;

(xii) any material breach by Graceway Canada of any of its obligations, representations, warranties or covenants set forth in the Asset Purchase Agreement, as applicable, which material breach is not cured on or within five (5) Business Days after the giving of written notice of such breach to the Debtors;

(xiii) the failure to make adequate protection payments or pay professional fees, costs and expenses of the First Lien Agent, in each case, when and as provided for under this Interim Order;

(xiv) the Debtors fail to file the Sale Motion (as defined in the DIP Motion) on or within three (3) Business Days following the Petition Date seeking approval of the Bidding Procedures (as defined in the Asset Purchase Agreement) and Sale (as defined in the DIP Motion) in this Court;

(xv) the Debtors fail to obtain entry by this Court of (a) the Bidding Procedures Order (as defined in the Asset Purchase Agreement) within forty-five (45) days after the Petition Date or (b) the Sale Order (as defined in the Asset Purchase Agreement) by January 2, 2012;

(xvi) (a) the termination of the Asset Purchase Agreement other than in connection with acceptance of an Alternative Transaction (as defined in the Asset Purchase Agreement) that is acceptable to the Postpetition Lender and Approving Majority First Lien Lenders in their respective sole discretion, (b) the amendment or modification of, or filing of a pleading by any Debtor seeking to amend or modify, the Asset Purchase Agreement or any documents related thereto (including, without limitation, the Bidding Procedures, Bidding Procedures Order or Sale Order), in a manner not acceptable to the Postpetition Lender and Approving Majority First Lien Lenders in their respective sole discretion or (c) execution of definitive documents in respect of an Alternative Transaction that are not acceptable to the Postpetition Lender and Approving Majority First Lien Lenders in their respective sole discretion;

(xvii) the failure to consummate the Sale on or before January 27, 2012;

(xviii) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling or order enjoining the consummation of a material portion of the Sale;

(xix) the filing by any Debtor of any stand-alone plan of reorganization or liquidation (or the announcement of any Debtor's support of any such plan filed by any other party) prior to consummation of the Sale; and

(xx) the entry by this Court of an order, or the filing by the Debtors of a motion with this Court which seeks the entry of an order, authorizing the use of Cash Collateral for any purpose other than to pay the First Lien Obligations in full or as permitted in this Interim Order.

provided, however, that the consensual use arrangement of Prepetition Collateral, including, without limitation, Cash Collateral, described in this Interim Order shall, unless it shall have terminated earlier pursuant to the terms hereof, terminate on June 30, 2012 (unless extended automatically in accordance with paragraph 3(a) or by consent of the Approving Majority First Lien Lenders). The earliest date upon which the consensual Cash Collateral use arrangement described in this Interim Order is terminated pursuant to this paragraph 3(c) shall be referred to herein as the “*Cash Collateral Termination Date*.” In the event this Interim Order terminates pursuant to this clause (c), the Adequate Protection Collateral will be used to fund the Maximum Carve-Out Amount pursuant to paragraph 8 below and to satisfy the Intercompany Loan pursuant to paragraph 5(d) before being used to satisfy any other obligation, including, without limitation, the First Lien Obligations.

(d) Payments on Account of Prepetition Obligations. Without limiting the foregoing, the Debtors shall not be permitted to make any payments on account of any prepetition debt or obligation prior to the effective date of a Chapter 11 plan or plans with respect to any of the Debtors, except (i) as set forth in this Interim Order; (ii) as provided in the first day orders, which first day orders shall be in form and substance reasonably acceptable to the Postpetition Lender, First Lien Agent and Majority First Lien Lenders; and (iii) as provided in the other motions, orders and requests for relief filed by the Debtors, each in form and substance reasonably acceptable to the Postpetition Lender, First Lien Agent and Approving Majority First Lien Lenders.

(e) Enforceable Obligations. No obligation, payment, transfer or grant of security under this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under Sections 502(d), 544, 547, 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaim, cross-claim, defense or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. **Adequate Protection for Prepetition Secured Parties.** The Prepetition Secured Parties shall receive the following adequate protection (collectively referred to as the ***“Prepetition Secured Parties’ Adequate Protection”***):

(a) **Adequate Protection Replacement Liens.** To the extent of the diminution in value of the respective interests of the Prepetition Secured Parties in the respective Prepetition Collateral, including, without limitation, the Cash Collateral, from and after the Petition Date, calculated in accordance with Section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtors of the applicable Prepetition Collateral, including, without limitation, the Cash Collateral, the granting of the DIP Liens, the subordination of the Prepetition Liens thereto and to the Carve-Out and the imposition or enforcement of the automatic stay of Section 362(a) (collectively, ***“Diminution in Value”***) (in addition to (but without duplication of) any claim for Diminution in Value that may arise during the course of the Chapter 11 Cases, the First Lien Claimholders shall have (solely upon entry of the Final Order) a valid, binding and enforceable claim for Diminution in Value equal to the product of (x) 1 minus the quotient of the



U.S. Cash Consideration and the Cash Consideration (in each case, as defined in the Sale Support Agreement) and (y) the sum of the amounts set forth in Section 4(b) of the Sale Support Agreement that are authorized to be paid in accordance with the Sale Order), the First Lien Agent and Second Lien Agent, as applicable, for the benefit of the First Lien Claimholders and Second Lien Claimholders, as applicable, are hereby granted, subject to the terms and conditions set forth below, pursuant to Sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, replacement Liens upon all property of the Debtors, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the First Lien Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, proceeds of the Debtors' claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law ("*Avoidance Actions*") (solely upon entry of the Final Order), rights under Section 506(c) of the Bankruptcy Code (solely upon entry of the Final Order), all other Prepetition Collateral and all other "property of the estate" (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits,

replacements and cash and non-cash proceeds of all of the foregoing (all of the foregoing collateral collectively referred to as the “*Adequate Protection Collateral*” and such adequate protection replacement liens, the “*Adequate Protection Replacement Liens*”). The Adequate Protection Replacement Liens on such Adequate Protection Collateral shall be subject and subordinate only to (i) the DIP Liens, (ii) the Prepetition Prior Liens, (iii) the payment of the Carve-Out and (iv) with respect to the Adequate Protection Replacement Liens granted to the Second Lien Agent for the benefit of the Second Lien Claimholders only, the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders. For the avoidance of doubt, the Adequate Protection Replacement Liens granted to the Second Lien Agent for the benefit of the Second Lien Claimholders shall be subordinated to the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders on the same basis as the Second Priority Liens are subordinated to the First Priority Liens under the Intercreditor Agreement.

(b) Adequate Protection Super-Priority Claims. To the extent of Diminution in Value, the First Lien Claimholders and Second Lien Claimholders are hereby granted allowed super-priority administrative claims (such adequate protection super-priority claims, the “*Adequate Protection Super-Priority Claims*”) against each of the Debtors pursuant to Sections 361, 363(e), 364(d)(1) and 507(b) of the Bankruptcy Code, which shall have priority, subject only to (i) the DIP Super-Priority Claims, (ii) the payment of the Carve-Out and (iii) with respect to the Adequate Protection Super-Priority Claims granted to the Second Lien Claimholders, the Adequate Protection Super-Priority Claims granted to the First Lien Claimholders, over all administrative expense claims, adequate protection and other diminution claims, unsecured claims and all other claims against the Debtors, now existing or hereafter arising, of any kind or

nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 546, 726, 1113 and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment. The Adequate Protection Super-Priority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, provided, however, that (i) to the extent the Cash Collateral Termination Date shall have occurred, the Maximum Carve-Out Amount shall be funded and the Intercompany Loan shall be paid in full (including all accrued and previously capitalized interest thereon) in cash pursuant to paragraph 5(d) before any payments shall be made on account of the Adequate Protection Super-Priority Claims and (ii) to the extent the Cash Collateral Termination Date shall not have occurred, all amounts set forth in section 4(b) of the Sale Support Agreement shall be funded (provided, the Sale shall have been consummated) and the Intercompany Loan shall be paid in full (including all accrued and previously capitalized interest thereon) in cash pursuant to paragraph 5(d) before any payments shall be made on account of the Adequate Protection Super-Priority Claims, in each case, in accordance with the terms of this Interim Order. Other than as provided in this Interim Order with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be,

senior to, prior to or on a parity with the Adequate Protection Replacement Liens and the Adequate Protection Super-Priority Claims.

(c) Adequate Protection Payments, Professional Fees and Information. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the First Lien Agent and Majority First Lien Lenders to the entry of this Interim Order and the Debtors' consensual use of the Prepetition Collateral, including, without limitation, the Cash Collateral, as provided herein, the Debtors shall (i) within three (3) Business Days of the date of entry of this Interim Order pay to the First Lien Agent a cash amount equal to \$973,838.09, (ii) timely pay in cash all reasonable out of pocket fees, costs and expenses of the First Lien Agent (including, without limitation, payment in advance of the agency fee required to be paid pursuant to Section 2.11(c) of the First Lien Credit Agreement) and its professionals, including, without limitation, Morgan, Lewis & Bockius LLP, as financing counsel, Wachtell, Lipton, Rosen & Katz, as special restructuring and bankruptcy counsel, DLA Piper LLP, as local counsel, one foreign counsel and one financial advisor (collectively, the "*First Lien Professional Fees*"), in each case, on a regular monthly basis during the Chapter 11 Cases, without further notice, motion or application to, order of, or hearing before, this Court; provided that after consummation of the Sale, if the proceeds of the Sale are not sufficient to satisfy the claims of the First Lien Claimholders in full, the First Lien Agent shall pay such fees and expenses from proceeds of the Sale that would otherwise be distributed to the First Lien Agent for the benefit of the First Lien Claimholders withheld for such purpose, and (iii) deliver to the First Lien Agent, the Second Lien Agent and their respective advisors all information, reports, documents and other material that they may reasonably request, either directly or through their professionals (it being understood that the First Lien Agent, the Second Lien Agent and their respective advisors

shall be permitted in their sole discretion to distribute such information, reports, documents and other material to the First Lien Claimholders and Second Lien Claimholders, as applicable, upon request). Notwithstanding anything contained herein or otherwise, (A) all such professional fees (in each case, as described above) pursuant to this Interim Order shall be subject to recharacterization and reapplication pursuant to further order of this Court if and to the extent the First Lien Obligations are determined by this Court to be undersecured and (B) the Debtors shall not be obligated to reimburse any Prepetition Secured Party with respect to the defense of Claims and Defenses in the event such Claims and Defenses are asserted pursuant to paragraph 7 of this Interim Order.

(d) Notice of Professional Fees. None of the fees, costs and expenses incurred by professionals engaged by the First Lien Agent shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided, that such professionals shall submit copies of their respective professional fee invoices to the Debtors, the U.S. Trustee, counsel for the Postpetition Lender and counsel for the Committee (if appointed) (and any subsequent trustee of the Debtors' estates). Such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential or privileged information, and the provision of such invoices shall not constitute any waiver of any privilege (including, without limitation, the attorney-client privilege) or of any benefits of the attorney work product doctrine. The Debtors, the U.S. Trustee, the Postpetition Lender and the Committee (if appointed) (and any subsequent trustee of the Debtors' estates) may object to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses included in any professional fee

invoice submitted by such professionals; provided that, any such objection shall be forever waived and barred unless (i) it is filed with this Court and served on the applicable professional, the First Lien Agent and the Debtors no later than five (5) days after delivery of the applicable professional fee invoice to the objecting party and (ii) it describes with particularity the specific basis for the objection. Any hearing on an objection to payment of any fees, costs and expenses set forth in such professional fee invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses which are the subject of such objection. All such unpaid fees, costs and expenses that have not been disallowed by this Court on the basis of an objection filed by the Debtors, the U.S. Trustee, the Postpetition Lender or the Committee (if appointed) (or any subsequent trustee of the Debtors' estates) in accordance with the terms hereof shall constitute First Lien Obligations and shall be secured by the Adequate Protection Collateral as specified in this Interim Order. The Debtors shall pay in accordance with the terms and conditions of this Interim Order the undisputed fees, costs and expenses reflected on any professional fee invoice no later than ten (10) Business Days after the submission thereof, or, in the case of any fees, cost and expenses timely objected to by the Debtors, the U.S. Trustee, the Postpetition Lender or the Committee (if appointed) (or any subsequent trustee of the Debtors' estates) in accordance with the terms hereof, no later than ten (10) Business Days after such objection has been resolved by this Court.

(e) Right to Seek Additional Adequate Protection. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, this Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. However, subject to the terms of the Intercreditor Agreement, any Prepetition Secured Party may request further or different adequate

protection, and the Debtors or any other party in interest may (subject to the Intercreditor Agreement) contest any such request; provided that any such further or different adequate protection shall at all times be subordinate and junior to the DIP Super-Priority Claims and DIP Liens of the Postpetition Lender granted under this Interim Order.

(f) Consent to Priming and Adequate Protection. The First Lien Agent and the Majority First Lien Lenders consent to the use of the Prepetition Collateral, including, without limitation, the Cash Collateral, the Prepetition Secured Parties' Adequate Protection and the priming provided for herein; provided, however, that such consent is expressly conditioned upon the entry of this Interim Order and shall not be deemed to extend to any other replacement financing or debtor-in-possession financing other than the Intercompany Loan or any other use of the Prepetition Collateral, including, without limitation, the Cash Collateral other than as specified herein; and provided, further, that (I) such consent shall be of no force and effect in the event this Interim Order is not entered or is entered and subsequently reversed, vacated, stayed or modified (unless such reversal, vacatur, stay or modification is acceptable to the First Lien Agent and the Approving Majority First Lien Lenders, in their sole discretion) and (II) in the event of the occurrence of the Cash Collateral Termination Date, nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing concerning the continued use of the Prepetition Collateral, including, without limitation, the Cash Collateral, by the Debtors.

5. **Intercompany Loan.**

(a) Tranches. The Intercompany Loan shall consist of a tranche A intercompany term loan in aggregate principal amount equal to \$3,800,000 (the "***Tranche A Intercompany Loan***") and a tranche B intercompany term loan in aggregate principal amount

equal to \$2,200,000 (the “*Tranche B Intercompany Loan*”). The Borrower shall borrow the Tranche A Intercompany Loan and Tranche B Intercompany Loan, in each case, no later than the third day after the entry by the Court of this Interim Order. The Borrower is hereby authorized, and agrees, to use the proceeds of (i) the Tranche A Intercompany Loan only in accordance with the terms and conditions of this Interim Order, including, without limitation, the Approved Budget and Budget Covenants and (ii) the Tranche B Intercompany Loan only in accordance with the terms and conditions of this Interim Order, including, without limitation, the Approved Budget and Budget Covenants, and with the prior written consent of the Approving Majority First Lien Lenders (it being understood that the Approving Majority First Lien Lenders shall be deemed to have consented to the Debtors’ use of the proceeds of the Tranche B Intercompany Loan to pay the Expense Reimbursement Amount (as defined in the Asset Purchase Agreement) if approved by the Court pursuant to the Bidding Procedures Order and due and payable pursuant to the terms of the Asset Purchase Agreement).

(b) Interest and Fees. Interest on the outstanding principal amount of the Intercompany Loan shall be capitalized and added thereto until the outstanding principal amount (including all previously capitalized interest) is paid in full on the Maturity Date (as defined below). Interest shall accrue at 4.75% per annum. Interest shall be capitalized quarterly, commencing with the Debtors’ fiscal quarter ending December 31, 2011. No fees, costs, expenses or other charges shall accrue or be payable in connection with the Intercompany Loan.

(c) Maturity. The Intercompany Loan shall mature and be paid in full (including all accrued and previously capitalized interest thereon) in cash on the earlier of one year from the date of entry of this Interim Order or closing of the Sale (the “*Maturity Date*”).



(d) Remedies. Failure to pay the entire principal amount of the Intercompany Loan to the Postpetition Lender on the Maturity Date shall constitute a default under the Intercompany Loan (an “*Intercompany Loan Default*”). The Debtors shall cure any Intercompany Loan Default within three (3) Business Days following receipt of notice of such default, provided, that, if the Debtors fail to cure the Intercompany Loan Default, the Postpetition Lender may seek an emergency hearing before this Court for the sole purpose of determining whether an Intercompany Loan Default has occurred and seeking relief from the automatic stay to exercise its rights and remedies with respect to the Adequate Protection Collateral in accordance with this Interim Order and applicable law.

(e) DIP Liens. As security for the Intercompany Loan, pursuant to Section 364(d)(1) of the Bankruptcy Code the Debtors hereby grant to the Postpetition Lender a perfected first priority, senior priming Lien (the “*DIP Liens*”) on all Adequate Protection Collateral (including, without limitation, Cash Collateral) that is senior and priming to (A) the Prepetition Liens, (B) the Adequate Protection Replacement Liens and (C) any Liens that are junior to the Prepetition Liens, after giving effect to any intercreditor or subordination agreements (the Liens referenced in clauses (A), (B) and (C), collectively, the “*Primed Liens*”). The DIP Liens shall immediately and without any further action by any Person, be valid, binding, permanent, perfected, continuing, enforceable and non-avoidable upon the date this Court enters this Interim Order.

(f) DIP Lien Priority. Notwithstanding anything to the contrary contained in this Interim Order, for the avoidance of doubt, the DIP Liens granted to the Postpetition Lender shall in each and every case be first priority senior Liens that (i) are subject only to (A) valid, enforceable, non-avoidable and perfected Liens in existence on the Petition Date that (I) after

giving effect to any intercreditor or subordination agreement, are senior in priority to the Prepetition Liens and (II) are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and after giving effect to any intercreditor or subordination agreement are senior in priority to the Prepetition Liens (collectively, the “*Prepetition Prior Liens*”) and (B) the Carve-Out (to the extent provided in the provisions of this Interim Order), and (ii) except as provided in sub-clause (i) of this clause (f), are senior to all prepetition and postpetition Liens of any other person or entity (including, without limitation, the Primed Liens). The DIP Liens and the DIP Super-Priority Claims (A) shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code or, subject to entry of the Final Order, Section 506(c) of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any Lien that is avoided and preserved for the benefit of the Debtors and their estates under Section 551 of the Bankruptcy Code or (y) any other intercompany or affiliate Liens of the Debtors, and (C) shall be valid and enforceable in any Successor Case and/or upon the dismissal of any of the Chapter 11 Cases.

(g) Super-Priority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Interim Order, except with respect to Avoidance Actions, the Intercompany Loan shall constitute an allowed super-priority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the payment of the Carve-Out, over all administrative expense claims, adequate protection and other diminution claims (including the Adequate Protection Super-Priority Claims), unsecured claims and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328,

330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 546, 726, 1113 and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment (the “**DIP Super-Priority Claims**”). The DIP Super-Priority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof after funding of either (i) the Maximum Carve-Out Amount to the extent the Cash Collateral Termination Date shall have occurred or (ii) all amounts set forth in section 4(b) of the Sale Support Agreement to the extent the Cash Collateral Termination Date shall not have occurred and the Sale shall have been consummated, in each case, in accordance with the terms of this Interim Order. Other than as provided in this Interim Order with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the DIP Liens and the DIP Super-Priority Claims.

6. **Automatic Postpetition Lien Perfection.** This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the Adequate Protection Replacement Liens and the DIP Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the Adequate Protection Replacement Liens and the DIP Liens or to entitle the

Adequate Protection Replacement Liens and the DIP Liens to the priorities granted herein. Notwithstanding the foregoing, each of the First Lien Agent, the Second Lien Agent and the Postpetition Lender, as applicable (in the case of the First Lien Agent and Second Lien Agent, solely with respect to the Adequate Protection Replacement Liens), may, in its sole discretion, file financing statements, mortgages, security agreements, notices of Liens and other similar documents, and is hereby granted relief from the automatic stay of Section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded on the Petition Date. The applicable Debtors shall execute and deliver to each of the First Lien Agent, the Second Lien Agent and the Postpetition Lender, as applicable, all such financing statements, mortgages, notices and other documents as such party may reasonably request to evidence and confirm the contemplated priority of the Adequate Protection Replacement Liens granted pursuant hereto. Without limiting the foregoing, each of the First Lien Agent, the Second Lien Agent and the Postpetition Lender, as applicable, in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. Subject to the entry of the Final Order, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof

or other Adequate Protection Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable Adequate Protection Collateral or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the Prepetition Secured Parties in accordance with the terms of this Interim Order. To the extent that the First Lien Agent or Second Lien Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any First Lien Document or Second Lien Document, the Postpetition Lender shall also be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such First Lien Loan Document or Second Lien Loan Document, shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received first for its benefit and second, subsequent to payment in full of the Intercompany Loan, for the benefit of the Prepetition Secured Parties. The First Lien Agent or Second Lien Agent, as applicable, shall serve as agent for the Postpetition Lender for purposes of perfecting its Liens on all Adequate Protection Collateral that is of a type such that perfection of a Lien therein may be accomplished only by possession or control by a secured party.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.** The Debtors' Stipulations shall be binding upon the Debtors, Graceway Canada and any Chapter 11 trustee in all circumstances. The Debtors' Stipulations shall be binding upon each other party in interest, including any Committee, unless (i) such Committee or any other party in interest (other than the Debtors, Graceway Canada or any Chapter 11 trustee) obtains the authority to commence and actually commences, or if the Chapter 11 Cases are converted to

cases under Chapter 7 prior to the expiration of the Challenge Period (as defined below), the Chapter 7 trustee in such Successor Cases actually commences, on or before sixty (60) days after the appointment of any Committee in the Chapter 11 Cases (or if no Committee has been so appointed, seventy-five (75) days from the Petition Date) (such time period shall be referred to as the “**Challenge Period**,” and the date that is the last calendar day of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the “**Challenge Period Termination Date**”), (x) a contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings or releases included in the Debtors’ Stipulations, or (y) a contested matter or adversary proceeding against any or all of the Prepetition Secured Parties in connection with or related to the Prepetition Obligations, or the actions or inactions of any or all of the Prepetition Secured Parties arising out of or related to the Prepetition Obligations, or otherwise, including, without limitation, any claim against any or all of the Prepetition Secured Parties in the nature of a “lender liability” cause of action, setoff, counterclaim or defense to the Prepetition Obligations (including but not limited to those under Sections 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against any or all of the Prepetition Secured Parties) (the objections, challenges, actions and claims referenced in clauses (x) and (y), collectively, the “**Claims and Defenses**”) and (ii) this Court rules in favor of the plaintiff in any such timely and properly commenced contested matter or adversary proceeding; provided, that as to the Debtors, for themselves and not their estates, Graceway Canada, for itself and its estate, and any Chapter 11 trustee, all such Claims and Defenses are irrevocably waived and relinquished as of the Petition Date. Until the Challenge Period Termination Date, any party in interest (other than the Debtors, Graceway Canada and any Chapter 11 trustee, but including the Committee (if appointed)) may assert any Claims and

Defenses. If no Claims and Defenses with respect to the First Lien Claimholders or First Lien Obligations have been timely asserted in any such adversary proceeding or contested matter in accordance with this paragraph 7, then, upon the Challenge Period Termination Date, and for all purposes in these Chapter 11 Cases and any Successor Case, (i) all payments made to the First Lien Claimholders pursuant to this Interim Order or otherwise shall not be subject to counterclaim, set-off, subordination, recharacterization, defense or avoidance, (ii) any and all such Claims and Defenses by any party in interest shall be deemed to be forever released, waived and barred with respect to the First Lien Claimholders, (iii) the First Lien Obligations shall be deemed to be an allowed claim, and (iv) the Debtors' Stipulations with respect to the First Lien Claimholders, including, without limitation, the release provisions therein, shall be binding on all parties in interest, including any Committee. If no Claims and Defenses with respect to the Second Lien Claimholders or Second Lien Obligations have been timely asserted in any such adversary proceeding or contested matter in accordance with this paragraph 7, then, upon the Challenge Period Termination Date, and for all purposes in these Chapter 11 Cases and any Successor Case, (i) any and all such Claims and Defenses by any party in interest shall be deemed to be forever released, waived and barred with respect to the Second Lien Claimholders and (ii) the Debtors' Stipulations with respect to the Second Lien Claimholders, including, without limitation, the release provisions therein, shall be binding on all parties in interest, including any Committee. Notwithstanding the foregoing, to the extent any Claims and Defenses are timely asserted in any such adversary proceeding or contested matter, (x) the Debtors' Stipulations and the other provisions in clauses (i) through (iv) or clauses (i) and (ii), as applicable, in the immediately preceding sentences shall nonetheless remain binding and preclusive on any Committee (and any subsequent Chapter 7 trustee of the Debtors' estates) and

on any other party in interest from and after the Challenge Period Termination Date, except solely with respect to the party in interest timely asserting such Claims and Defenses to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) or clauses (i) and (ii), as applicable, in the immediately preceding sentences were expressly challenged in such adversary proceeding or contested matter, and (y) any portion of the Debtors' Stipulations or other provisions in clauses (i) through (iv) or clauses (i) and (ii), as applicable, in the immediately preceding sentences that is the subject of a timely filed Claim and Defense shall become binding and preclusive on such party in interest timely asserting such Claims and Defenses to the extent set forth in any order of this Court resolving such Claim and Defense. The Challenge Period in respect of the First Lien Obligations may be extended by written agreement of the First Lien Agent and the Majority First Lien Lenders and in respect of the Second Lien Obligations may be extended by written agreement of the Second Lien Agent and the Required Lenders (as defined in the Second Lien Credit Agreement), as applicable, in their sole discretion. Nothing in this Interim Order vests or confers on any person or entity, including any Committee, standing or authority to pursue any cause of action belonging to any or all of the Debtors or their estates, including, without limitation, any Claim and Defense or other claim against any Prepetition Secured Parties.

8. **Carve-Out.** Subject to the terms and conditions contained in this paragraph 8, each of the DIP Liens, DIP Super-Priority Claims, Prepetition Liens, Prepetition Obligations, Adequate Protection Replacement Liens and Adequate Protection Super-Priority Claims shall be subject and subordinate to payment of the Carve-Out (as defined below):

(a) For purposes of this Interim Order, "***Carve-Out***" means (i) all unpaid fees required to be paid in these Chapter 11 Cases to the clerk of this Court and to the office of the



United States Trustee under 28 U.S.C. § 1930(a), whether arising prior to or after the delivery of the Carve-Out Trigger Notice (as defined below); (ii) all reasonable and documented unpaid fees and expenses, including, without limitation, success fees, of professionals retained by the Debtors in these Chapter 11 Cases (collectively, the “*Debtors’ Professionals*”) that are incurred and earned prior to the delivery by the First Lien Agent of a Carve-Out Trigger Notice, have been or are subsequently allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code, do not exceed the cumulative amount budgeted for each such Debtors’ Professional in the applicable line item therefor in the Approved Budget and remain unpaid after application of any retainers (each such budgeted amount, a “*Debtors’ Professionals Carve-Out Cap*”); (iii) all reasonable and documented unpaid fees and expenses of professionals retained by the Committee in these Chapter 11 Cases (collectively, the “*Committee’s Professionals*”) and all reasonable and documented unpaid expenses of the members of such Committee (“*Committee Members*”) that are, in each case, incurred and earned prior to the delivery by the First Lien Agent of a Carve-Out Trigger Notice and have been or are subsequently allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code, in an aggregate amount (for both Committee Members and the Committee’s Professionals) not to exceed \$600,000 (the “*Committee Professionals Carve-Out Cap*”); (iv) all reasonable and documented unpaid fees and expenses, including, without limitation, success fees, of the Debtors’ Professionals that are incurred and/or earned on or after the delivery by the First Lien Agent of a Carve-Out Trigger Notice, that are allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code and remain unpaid after application of any retainers, in an aggregate amount not to exceed the sum of (A) if not paid prior to delivery by the First Lien Agent of a Carve-Out Trigger Notice, the Sale Transaction Fee due and owing to Lazard Frères & Co. LLC (“*Lazard*”) as

defined in and pursuant to the terms of that certain engagement letter, dated March 12, 2010, between Lazard and the Borrower (the “*Lazard Success Fee*”) and (B) \$1,250,000 (the “*Debtors’ Professionals Post Carve-Out Cap*”); and (v) all reasonable and documented unpaid fees and expenses of the Committee Professionals that are incurred and/or earned on or after the delivery by the First Lien Agent of a Carve-Out Trigger Notice and are allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code, in an aggregate amount not to exceed \$50,000 (the “*Committee Professionals Post Carve-Out Cap*” and together with the Debtors’ Professionals Carve-Out Cap, the Debtors’ Professionals Post Carve-Out Cap and Committee Professionals Carve-Out Cap, the “*Carve-Out Cap*”) (clauses (i) through (v), collectively, the “*Carve-Out*”). The term “*Carve-Out Trigger Notice*” shall mean a written notice delivered by the First Lien Agent to the Debtors’ lead counsel, counsel for the Postpetition Lender, the U.S. Trustee, counsel for the Second Lien Agent, and counsel to any Committee appointed in these Chapter 11 Cases, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default, expressly stating that the Carve-Out is invoked.

(b) Any payments actually made pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 363, 503, 1103 or otherwise to Debtors’ Professionals or Committee’s Professionals shall in the case of any payments made on account of any fees and expenses described in clauses (iii), (iv) and (v) of the definition of Carve-Out, reduce the applicable Carve-Out Cap on a dollar-for-dollar basis.

(c) Notwithstanding any provision in this paragraph 8 to the contrary or otherwise, no portion of the Carve-Out, Cash Collateral, Prepetition Collateral, Adequate

Protection Collateral or proceeds of the Intercompany Loan shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 15 hereof.

(d) Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any Committee, any other official or unofficial committee in these Chapter 11 Cases, or of any other person or entity, or shall affect the right of any Prepetition Secured Party to object to the allowance and payment of such fees and expenses.

(e) On the Cash Collateral Termination Date, if any, the Debtors shall use the proceeds of the Intercompany Loan (subject to paragraph 5(a) above) and Cash Collateral (including, for the avoidance of doubt, proceeds of any liquidated Adequate Protection Collateral) to fund an amount equal to the unused portion of the Maximum Carve-Out Amount into an interest-bearing reserve escrow at a financial institution reasonably acceptable to the First Lien Agent (the “*Carve-Out Escrow Account*”) in full and complete satisfaction of the Postpetition Lender’s, First Lien Agent’s, Second Lien Agent’s, First Lien Claimholders’ and Second Lien Claimholders’ obligations in respect of the Carve-Out; provided, however, that any unused amounts held in the Carve-Out Escrow Account shall continue to be subject to the DIP Liens, Adequate Protection Replacement Liens and Prepetition Liens in accordance with the terms hereof. The funds held in the Carve-Out Escrow Account shall only be used by the Debtors to pay such amounts if and when incurred, earned and allowed by this Court under Sections 105(a), 330 and 331 of the Bankruptcy Code. For the avoidance of doubt, (i) the portion of the Carve-Out Escrow Account pertaining to the period prior to the delivery of the Carve-Out Trigger Notice allocated to each applicable retained professional shall be limited to the amount set forth in the Approved Budget for such professional, (ii) (except for the Lazard

Success Fee, which shall be allocated to Lazard) the portion of the Carve-Out Escrow Account pertaining to the Debtors' Professionals Post Carve-Out Cap shall be allocated to each applicable retained Debtors' professional based upon the amount set forth in the Approved Budget for such professional for the period prior to the delivery of a Carve-Out Trigger Notice divided by the total amount set forth in the Approved Budget for all of the Debtors' professionals during the period prior to the delivery of a Carve-Out Trigger Notice and (iii) the portion of the Carve-Out Escrow Account pertaining to the Committee Professionals Post Carve-Out Cap shall be allocated to each applicable retained Committee professional based upon the amount set forth in the Approved Budget for such professional for the period prior to the delivery of a Carve-Out Trigger Notice divided by the total amount set forth in the Approved Budget for all of the Committee professionals during the period prior to the delivery of a Carve-Out Trigger Notice.

9. **Waiver of Section 506(c) Claims.** Subject to the entry of the Final Order, as a further condition to the Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, and to the payment of the Carve-Out to the extent provided herein, no costs or expenses of administration of the Chapter 11 Cases or any Successor Case (including, without limitation, any costs and expenses of preserving or disposing of property securing the Prepetition Obligations) shall be charged against or recovered from or against any or all of the Prepetition Secured Parties, the Adequate Protection Collateral, the Prepetition Collateral, and the Cash Collateral, in each case, pursuant to Section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the First Lien Agent and the Majority First Lien Lenders and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the First Lien Claimholders.

10. **After-Acquired Property.** Subject to the entry of the Final Order, the “equities of the case” exception of Section 552 of the Bankruptcy Code shall not apply.

11. **Protection of First Lien Secured Parties’ Rights.**

(a) Unless the First Lien Agent and Approving Majority First Lien Lenders shall have provided their prior written consent, there shall not be entered in these proceedings, or in any Successor Case, any order (other than this Interim Order and the Final Order) which authorizes the obtaining of credit or the incurrence of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the Adequate Protection Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the Adequate Protection Replacement Liens granted to the First Lien Agent for the benefit of the First Lien Claimholders and the Adequate Protection Super-Priority Claims granted to the First Lien Claimholders (except the Intercompany Loan and any such indebtedness used to refinance the First Lien Obligations in full).

(b) The Debtors (and/or their legal and financial advisors) will (i) maintain books, records and accounts to the extent and as required by the First Lien Documents, (ii) cooperate with, consult with, and provide to the First Lien Agent and the Majority First Lien Lenders all such information as required or allowed under the First Lien Documents or the provisions of this Interim Order, (iii) permit representatives of the First Lien Agent and Majority First Lien Lenders such rights to visit and inspect any of the Debtors’ respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors’ business premises and other properties, and to discuss, and consult with respect to, the Debtors’ respective affairs, finances, properties, business operations and accounts with the Debtors’

respective officers, employees and independent public accountants and (iv) permit the First Lien Agent, the Majority First Lien Lenders and their respective representatives, to consult with the Debtors' management and advisors on matters concerning the general status of the Debtors' businesses, financial condition and operations.

12. **Cash Collection.** From and after the date of the entry of this Interim Order, all collections and proceeds of any Adequate Protection Collateral or Prepetition Collateral or services provided by any Debtor and all Cash Collateral which shall at any time come into the possession, custody or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in the same bank accounts into which the collections and proceeds of the Prepetition Collateral were deposited under the First Lien Documents (or in such other accounts as are designated by First Lien Agent from time to time).

13. **Disposition of Collateral.** Except for the Sale and as otherwise permitted under this Interim Order, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral or Adequate Protection Collateral outside of the ordinary course of business without the prior written consent of the First Lien Agent and the Majority First Lien Lenders (and no such consent shall be implied from any other action, inaction or acquiescence by the First Lien Agent or any First Lien Lender or any order of this Court). Upon any sale or disposition of substantially all of the Adequate Protection Collateral, (i) to the extent the Cash Collateral Termination Date shall have occurred, the Maximum Carve-Out Amount shall be funded and the Intercompany Loan shall be paid in full pursuant to paragraph 5(d) before any payments shall be made on account of the First Lien Obligations and (ii) to the extent the Cash Collateral Termination Date shall not have occurred, all amounts set forth in section 4(b) of the Sale Support Agreement shall be funded and the Intercompany Loan

shall be paid in full pursuant to paragraph 5(d) before any payments shall be made on account of the First Lien Obligations.

14. **Relief from Automatic Stay.**

(a) Any automatic stay otherwise applicable to the First Lien Claimholders is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the Approving Majority First Lien Lenders to exercise the following remedies immediately upon the occurrence and during the continuance of an Event of Default (subject to the limitations set forth in this Paragraph 14): (i) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral, including Cash Collateral derived solely from the proceeds of Adequate Protection Collateral, and to use Prepetition Collateral other than in the ordinary course (any such declaration to be made to the Debtors, the Postpetition Lender, counsel to the Committee (if appointed) and the United States Trustee and to be referred to herein as a “***Termination Declaration***” and the date on which the earliest of any such Termination Declaration occurs being herein referred to as the “***Termination Declaration Date***”) and/or (ii) the First Lien Claimholders shall be permitted to reduce any claim to judgment.

(b) During the five (5) Business Day period after the Termination Declaration Date, the Debtors and any Committee shall be entitled to an emergency hearing before the Court for the sole purpose of contesting whether an Event of Default has occurred and Section 105 of the Bankruptcy Code may not be invoked by the Debtors in an effort to restrict or preclude any First Lien Lender from exercising any rights or remedies set forth in this Interim Order. Unless during such period the Court determines that an Event of Default has not occurred and/or is not continuing, this Interim Order shall automatically terminate (or, if the Approving Majority First

Lien Lenders shall have specified, in their sole discretion, in the Termination Declaration that the Prepetition Collateral, including, without limitation, Cash Collateral, use arrangement set forth herein shall instead be reduced or restricted, such use arrangement shall be so reduced or restricted) at the end of such 3 Business Day period in accordance with paragraph 3(c), without further notice or order. During such five (5) Business Day period, the Debtors may not use Cash Collateral except to pay payroll and other expenses critical to keep the business of the Debtors operating, in each case, in accordance with the Approved Budget.

(c) The automatic stay imposed under Bankruptcy Code Section 362(a) is hereby modified pursuant to the terms of this Interim Order as necessary to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Prepetition Secured Parties and the Postpetition Lender under this Interim Order, (ii) authorize the Postpetition Lender to retain and apply payments hereunder in connection with an Intercompany Loan Default and (iii) otherwise implement and effectuate the provisions of this Interim Order.

15. **Restriction on Use of Proceeds.** Notwithstanding anything herein to the contrary, no proceeds from the Intercompany Loan, Adequate Protection Collateral, Cash Collateral (including any prepetition retainers funded by any or all of the Prepetition Secured Parties), Prepetition Collateral, or any portion of the Carve-Out may be used by any of the Debtors, any Committee, any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Case, or any other person, party or entity to (or to pay any professional fees and disbursements incurred in connection therewith) (a) request authorization to obtain postpetition loans or other financial accommodations pursuant to Bankruptcy Code Section 364(c) or (d), or otherwise, other than the Intercompany Loan or loans used to refinance the First



Lien Obligations in full; or (b) investigate (except as set forth below), assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any or all of the Prepetition Secured Parties and their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any Claims and Defenses or any Avoidance Actions, in each case, with respect to the Prepetition Secured Parties; (ii) any so-called “lender liability” claims and causes of action with respect to the Prepetition Secured Parties; (iii) any action with respect to the validity, enforceability, priority and extent of the Prepetition Obligations, or the validity, extent, perfection and priority of the Prepetition Liens or the Adequate Protection Replacement Liens (or the value of any of the Prepetition Collateral or Adequate Protection Collateral); (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Liens, the Adequate Protection Replacement Liens or the other Prepetition Secured Parties’ Adequate Protection; and/or (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to any or all of the Prepetition Secured Parties hereunder or the Prepetition Documents; provided, however, up to \$25,000 in the aggregate of the Committee Professionals Carve-Out Cap and Committee Professionals Post Carve-Out Cap, any Adequate Protection Collateral, any Prepetition Collateral and any Cash Collateral may be used by the Committee (to the extent such committee is appointed) to investigate (but not prosecute) the extent, validity and priority of the Prepetition Obligations, the

Prepetition Liens or any other claims against the Prepetition Secured Parties so long as such investigation occurs within fifty (50) days after entry of the Final Order.

16. **Proofs of Claim.** Upon entry of the Final Order, the First Lien Agent, the First Lien Claimholders, the Second Lien Agent and the Second Lien Claimholders will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. The Debtors' Stipulations in paragraph D herein shall be deemed to constitute a timely filed proof of claim for the First Lien Agent, the First Lien Claimholders, the Second Lien Agent and the Second Lien Claimholders, as applicable. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases to the contrary, the First Lien Agent for the benefit of itself and the other First Lien Claimholders and the Second Lien Agent for the benefit of itself and the other Second Lien Claimholders is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or Successor Cases for any claim allowed herein or otherwise.

17. **Preservation of Rights Granted under the Interim Order.**

(a) **No Non-Consensual Modification or Extension of Interim Order.** The Debtors shall not seek, and it shall constitute an Event of Default (resulting, among other things, in the termination of the Debtors' right to use the Prepetition Collateral, including, without limitation, the Cash Collateral and the immediate maturity of the Intercompany Loan) if there is entered (except as otherwise provided herein) an order amending, supplementing, extending or otherwise modifying this Interim Order without the prior written consent of the First Lien Agent and the Majority First Lien Lenders, and no such consent shall be implied by any other action, inaction or acquiescence.

(b) Dismissal. If any order dismissing any of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code), to the fullest extent permitted by law, that (i) the Prepetition Secured Parties' Adequate Protection and DIP Protections shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all Prepetition Secured Parties' Adequate Protection or the Intercompany Loan, as applicable, have been paid in full in cash or are otherwise satisfied in full (and that the Prepetition Secured Parties' Adequate Protection and DIP Protections shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Prepetition Secured Parties' Adequate Protection and DIP Protections.

(c) Modification of Interim Order. Based on the findings set forth in this Interim Order and in accordance with Section 364(e) of the Bankruptcy Code, which is applicable to the Intercompany Loan contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed by a subsequent order of this Court or any other court, the Postpetition Lender shall be entitled to the protections provided in Section 364(e) of the Bankruptcy Code.

(d) Survival of Interim Order. The provisions of this Interim Order, any actions taken pursuant hereto, the Prepetition Secured Parties' Adequate Protection, the DIP Protections and all other rights, remedies, Liens, priorities, privileges, protections and benefits granted to any of the Prepetition Secured Parties or the Postpetition Lender shall survive, and shall not be modified, impaired or discharged by, the entry of any order confirming any plan of reorganization or liquidation in any Chapter 11 Case, converting any Chapter 11 Case to a case

under Chapter 7, dismissing any of the Chapter 11 Cases, withdrawing of the reference of any of the Chapter 11 Cases or any Successor Case or providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this Court, or terminating the joint administration of these Chapter 11 Cases or by any other act or omission. The terms and provisions of this Interim Order, including the Prepetition Secured Parties' Adequate Protection, the DIP Protections and all other rights, remedies, Liens, priorities, privileges, protections and benefits granted to any of the Prepetition Secured Parties or Postpetition Lender, shall continue in full force and effect notwithstanding the entry of any such order, and the Prepetition Secured Parties' Adequate Protection and DIP Protections shall continue in these proceedings and in any Successor Case, and shall maintain their respective priorities as provided by this Interim Order.

18. **Other Rights and Obligations.**

(a) **Binding Effect.** Subject to paragraph 7 above, the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, (i) the Prepetition Secured Parties, any Committee, the Debtors and the Postpetition Lender and their respective successors and assigns, (ii) any Chapter 7 or Chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, (iii) an examiner appointed pursuant to Section 1104 of the Bankruptcy Code and (iv) any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors, in each case, whether in any of the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 Case or Successor Case; provided, however, that the Prepetition Secured Parties shall have no obligation to permit the use of Prepetition Collateral, including, without limitation, the Cash Collateral, by any Chapter 7 or Chapter 11 trustee or other responsible person appointed for the

estates of the Debtors in any Chapter 11 Case or Successor Case, other than the Debtors in accordance with the terms hereof.

(b) No Waiver. The failure of the First Lien Claimholders to seek relief or otherwise exercise their rights and remedies under this Interim Order, the First Lien Documents or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Prepetition Collateral, including, without limitation, Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any First Lien Claimholder, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion). Except as prohibited by this Interim Order and the First Lien Documents, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the ability of the First Lien Claimholders under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Chapter 11 Cases to cases under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, any Chapter 11 plan or plans with respect to any of the Debtors, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the First Lien Claimholders. Except to the extent otherwise expressly provided in this Interim Order, neither the commencement of the Chapter 11 Cases nor the entry of this Interim Order shall limit or otherwise modify the rights and remedies of the First Lien Claimholders with respect to non-

Debtor entities or their respective assets, whether such rights and remedies arise under the First Lien Documents, applicable law, or equity.

(c) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary. In determining to permit the use of Prepetition Collateral, including, without limitation, the Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order, the First Lien Claimholders shall not (i) be deemed to be in control of the operations of the Debtors or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates.

(d) No Marshaling. Neither the First Lien Claimholders nor the Postpetition Lender shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Adequate Protection Collateral or the Prepetition Collateral, as applicable.

(e) Amendments. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by on behalf of all the Debtors and the First Lien Agent (after having obtained the approval of the Majority First Lien Lenders) and, except as provided herein, approved by this Court; provided, however, that any waiver, modification or amendment of any of the provisions hereof relating to the Intercompany Loan shall also be signed by or on behalf of the Postpetition Lender.

(f) Inconsistency. In the event of any inconsistency between the terms and conditions of the Prepetition Documents and the terms and conditions of this Interim Order, the provisions of this Interim Order shall govern and control.

(g) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(h) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

19. **Final Hearing**.

(a) The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2011, at \_\_\_\_\_ (prevailing Eastern time) at this Court. The proposed Final Order shall be substantially the same as the Interim Order except that those provisions in the Interim Order that are subject to the entry of the Final Order shall be included in the Final Order without such qualification. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

(b) Final Hearing Notice. On or before October 3, 2011 the Debtors shall serve, by United States mail, first-class postage prepaid, (such service constituting adequate notice of the Final Hearing) (i) notice of the entry of this Interim Order and of the Final Hearing (the "***Final Hearing Notice***") and (ii) a copy of this Interim Order, on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with

this Court and to any Committee, if the same shall have been appointed, or Committee counsel. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of this Court no later than October \_\_, 2011, which objections shall be served upon: (a) the Debtors, Graceway Pharmaceuticals, LLC, 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620, Attn: John A. Bellamy, john.bellamy@gracewaypharma.com, (b) counsel for the Debtors, Latham & Watkins LLP, 233 South Wacker Drive, Chicago, Illinois 60606, Attn: Josef Athanas and Caroline Reckler, josef.athanas@lw.com and caroline.reckler@lw.com; (c) financing counsel to the First Lien Agent, Morgan, Lewis & Bockius LLP, 225 Franklin Street, 16<sup>th</sup> Floor, Boston, Massachusetts 02110, Attn: Jonathan K. Bernstein, jbernstein@morganlewis.com; (d) special restructuring and bankruptcy counsel to the First Lien Agent, Wachtell, Lipton, Rosen & Katz, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Scott K. Charles and Michael S. Benn, SKCharles@wlrk.com and MSBenn@wlrk.com; (e) counsel to any Committee; (f) counsel to the Second Lien Agent, Sidley Austin LLP, One South Dearborn, Chicago, Illinois 60603, Attn: Larry J. Nyhan, lnyhan@sidley.com ; and (g) the Office of the United States Trustee for the District of Delaware, in each case to allow actual receipt of the foregoing no later than October \_\_, 2011, at 4:00 p.m. (prevailing Eastern time).

20. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: September \_\_, 2011  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT A**

**Approved Budget**

Pre-Sale Approved Budget  
(\$ in '000s)

	1	2	3	4	5	6	7	8	9	10
Week Ending:	10/7/11	10/14/11	10/21/11	10/28/11	11/4/11	11/11/11	11/18/11	11/25/11	12/2/11	12/9/11
<u>Receipts</u>										
Pharma Sales	\$ 1,671	\$ 1,693	\$ 1,940	\$ 2,252	\$ 2,533	\$ -	\$ 1,496	\$ 953	\$ 1,132	\$ 1,505
Royalties & Licensing	-	-	-	-	749	-	800	-	-	-
Other Receipts	-	-	-	-	-	-	-	-	-	-
Total Receipts	1,671	1,693	1,940	2,252	2,533	-	1,496	953	1,132	1,505
<u>Operating Disbursements</u>										
Rebates (plus Post-Closing CCRR)	290	-	321	-	290	-	320	-	290	-
Payroll & Benefits	29	799	10	682	26	702	429	682	26	701
Product, Packaging, Freight	647	267	162	973	350	379	292	1,199	236	83
R&D, Licensing, & Regulatory	18	18	18	18	188	73	73	73	188	70
Advertising & Promotion and Sales Expenses	113	463	113	113	219	266	216	216	212	201
Non-Restructuring Professional Fees	-	-	-	-	-	-	-	-	-	-
Ropes & Gray LLP	-	-	-	-	-	-	-	-	-	-
Edwards Angell Palmer & Dodge	-	-	-	-	-	-	-	-	-	-
Hogan Lovells US LLP	-	-	-	-	-	-	-	-	-	-
Other Non-Restructuring Professionals	-	-	-	43	-	-	-	-	87	-
Insurance	-	70	-	825	-	45	-	-	-	45
Taxes	-	-	24	-	-	-	-	-	-	-
Corporate, Occupancy, Utilities & Other Expenses	110	8	128	8	124	89	36	36	125	88
Total Operating Disbursements	1,207	1,624	776	2,662	1,198	1,554	1,366	2,206	1,163	1,189
<u>Restructuring &amp; Non-Operating Disbursements</u>										
Restructuring Professionals (Retained)	-	-	-	13	-	-	-	-	-	-
CapEx	6	6	6	6	6	6	6	6	6	6
Total Restructuring and Non-Op Disbursements	6	6	6	19	6	6	6	6	6	6
<u>Financing Disbursements/(Receipts)</u>										
Canadian Loan & Interest	(6,000)	-	-	-	-	-	-	-	-	-
1st Lien Advisors	-	-	-	-	469	-	-	-	-	469
1st Lien Interest & Fees	974	-	-	-	-	-	-	-	-	-
1st Lien Agent	-	125	-	3	-	-	-	-	3	-
Total Financing Disbursements	(5,026)	125	-	3	469	-	-	-	3	469
Net Cash Flow	\$ 5,484	\$ (62)	\$ 1,158	\$ (432)	\$ 861	\$ (1,560)	\$ 125	\$ (1,259)	\$ (40)	\$ (158)
Beginning Cash Balance	\$ 4,762	\$ 10,246	\$ 10,184	\$ 11,342	\$ 10,911	\$ 11,771	\$ 10,212	\$ 10,336	\$ 9,078	\$ 9,038
Net Cash Flow	5,484	(62)	1,158	(432)	861	(1,560)	125	(1,259)	(40)	(158)
Ending Cash Balance	\$ 10,246	\$ 10,184	\$ 11,342	\$ 10,911	\$ 11,771	\$ 10,212	\$ 10,336	\$ 9,078	\$ 9,038	\$ 8,880

Pre-Sale Approved Budget  
(\$ in '000s)

	11	12	13	14	15	16	17	
	12/16/11	12/23/11	12/30/11	1/6/12	1/13/12	1/20/12	1/27/12	Est. Accrued but Unpaid @ Closing (1)
<b>Week Ending:</b>								<b>Total</b>
<b>Receipts</b>								
Pharma Sales	\$ 1,180	\$ 1,357	\$ 1,474	\$ 1,025	\$ 1,477	\$ 915	\$ 939	\$ 21,992
Royalties & Licensing	-	-	-	-	-	-	-	1,549
Other Receipts	-	-	-	-	-	-	-	-
<b>Total Receipts</b>	<b>1,180</b>	<b>1,357</b>	<b>1,474</b>	<b>1,025</b>	<b>1,477</b>	<b>915</b>	<b>939</b>	<b>23,541</b>
<b>Operating Disbursements</b>								
Rebates (plus Post-Closing CCRR)	321	-	290	107	398	21	331	2,980
Payroll & Benefits	127	682	10	708	29	809	26	8,480
Product, Packaging, Freight	584	1,832	83	77	202	162	76	7,739
R&D, Licensing, & Regulatory	70	70	157	189	73	73	73	1,675
Advertising & Promotion and Sales Expenses	251	201	201	148	489	139	139	4,153
Non-Restructuring Professional Fees	-	-	-	-	-	-	-	-
Ropes & Gray LLP	-	-	-	-	-	-	-	-
Edwards Angell Palmer & Dodge	246	-	-	-	246	-	-	969
Hogan Lovells US LLP	97	-	-	-	97	-	-	482
Other Non-Restructuring Professionals	33	-	87	-	33	-	87	510
Insurance	-	-	-	-	-	-	-	985
Taxes	58	-	-	-	-	14	-	731
Corporate, Occupancy, Utilities & Other Expenses	35	35	35	88	124	35	35	1,265
<b>Total Operating Disbursements</b>	<b>1,822</b>	<b>2,820</b>	<b>862</b>	<b>1,318</b>	<b>1,691</b>	<b>1,253</b>	<b>767</b>	<b>29,967</b>
<b>Restructuring &amp; Non-Operating Disbursements</b>								
Restructuring Professionals (Retained)	622	-	-	-	1,444	-	-	8,670
CapEx	6	6	6	6	6	6	6	98
<b>Total Restructuring and Non-Op Disbursements</b>	<b>627</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>1,450</b>	<b>6</b>	<b>6</b>	<b>8,768</b>
<b>Financing Disbursements/(Receipts)</b>								
Canadian Loan & Interest	-	-	-	-	-	-	-	(6,000)
1st Lien Advisors	-	-	-	469	-	-	-	1,406
1st Lien Interest & Fees	-	-	-	-	-	-	-	974
1st Lien Agent	-	-	3	-	-	-	3	137
<b>Total Financing Disbursements</b>	<b>-</b>	<b>-</b>	<b>3</b>	<b>469</b>	<b>-</b>	<b>-</b>	<b>3</b>	<b>(3,483)</b>
<b>Net Cash Flow</b>	<b>\$ (1,269)</b>	<b>\$ (1,469)</b>	<b>\$ 603</b>	<b>\$ (768)</b>	<b>\$ (1,664)</b>	<b>\$ (343)</b>	<b>\$ 163</b>	<b>\$ (11,711)</b>

Beginning Cash Balance	\$ 8,880	\$ 7,611	\$ 6,142	\$ 6,745	\$ 5,977	\$ 4,313	\$ 3,969
Net Cash Flow	(1,269)	(1,469)	603	(768)	(1,664)	(343)	163
Ending Cash Balance	\$ 7,611	\$ 6,142	\$ 6,745	\$ 5,977	\$ 4,313	\$ 3,969	\$ 4,132

Note:

(1) Does not include estimated CCR liabilities

Pre-Sale Approved Budget  
(\$ in '000s)

Firm / Employees	Oct-11	Nov-11	Dec-11	Jan-12	Success Fee	Total	Estimated Unpaid Amt at Closing
<b>Debtor</b>							
Company Counsel (Latham)	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ -	\$ 4,000	\$ 2,437
Local Counsel (Young Conaway)	150	150	150	150	-	600	366
Claims / Noticing Agent (BMC)	50	50	50	50	-	200	100
Investment Bank (Lazard)	175	175	175	175	2,263	2,963	2,680
Restructuring Consultant (A&M)	379	288	299	295	-	1,261	806
Subtotal	1,754	1,663	1,674	1,670	2,263	9,024	6,389
<b>UCC</b>							
UCC Professionals	67	67	67	67	-	267	162
<b>Non-Restructuring Professionals (Retained)</b>							
Ropes & Gray LLP	-	-	-	-	-	-	-
Edwards Angell Palmer & Dodge	300	300	175	175	-	950	477
Hogan Lovells US LLP	118	118	118	118	-	473	288
PricewaterhouseCoopers	40	40	40	40	-	160	97
Subtotal	458	458	333	333	-	1,583	862
Trustee Fee	10	10	10	10	-	40	40
Sub-Total	2,288	2,198	2,084	2,080	2,263	10,913	7,453
<b>Other Non-Restructuring Professionals (Non-Retained)</b>							
Other Non-Restructuring Advisors	87	87	87	87	-	346	43
<b>1st Lien</b>							
1st Lien Professionals	450	450	450	450	-	1,800	327
<b>Total</b>	<b>2,825</b>	<b>2,735</b>	<b>2,621</b>	<b>2,617</b>	<b>2,263</b>	<b>13,060</b>	<b>7,824</b>

**Wind-Down Approved Budget**  
(\$ In '000s)

	Feb-12 <sup>(1)</sup>	Mar-12	Apr-12	May-12	Jun-12	Total
<b>Receipts</b>						
Paragraph 4 Funding Amounts (excl. 1% Holdback Account)	\$ 49,185	\$ -	\$ -	\$ -	\$ -	\$ 49,185
<b>Disbursements</b>						
Lazard Success Fee	2,263	-	-	-	-	2,263
Designated Account, excl Wind Down Expenses	18,255	-	-	-	-	18,255
Wind Down Expenses - Professional Fees Only	1,403	1,403	1,153	903	903	5,766
Wind Down Expenses - Corporate, Employee & Other	799	578	452	400	373	2,603
Wind Down Expenses - PTO / Severance / COBRA	2,616	-	-	-	-	2,616
CCR Account	17,683	-	-	-	-	17,683
<b>Total Disbursements</b>	<b>43,018</b>	<b>1,982</b>	<b>1,605</b>	<b>1,303</b>	<b>1,277</b>	<b>49,185</b>
<b>Net Cash Flow</b>	<b>6,167</b>	<b>(1,982)</b>	<b>(1,605)</b>	<b>(1,303)</b>	<b>(1,277)</b>	<b>-</b>
Beginning Cash Balance	-	6,167	4,185	2,580	1,277	-
Net Cash Flow	6,167	(1,982)	(1,605)	(1,303)	(1,277)	-
Ending Cash Balance	6,167	4,185	2,580	1,277	-	-

**Note:**

(1) Feb 2012 includes Jan 28-31

**EXHIBIT B**

**Intercompany Notes**

TRANCHE A INTERCOMPANY TERM LOAN NOTE

\$3,800,000

September 30, 2011

FOR VALUE RECEIVED, the undersigned, GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company (the "**Borrower**"), hereby unconditionally promises to pay to GRACEWAY CANADA COMPANY, a Nova Scotia unlimited liability company, and its successors and assigns (the "**Lender**"), at the office of the Lender or at such other place as the Lender may from time to time designate to the Borrower in writing, in lawful money of the United States and in immediately available funds, the principal amount of THREE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$3,800,000), or, if less, the unpaid principal amount of the Tranche A Intercompany Loan of the Lender as may be outstanding under the Order (as defined below). The principal amount of this Tranche A Intercompany Term Loan Note (as amended, restated, amended and restated, supplemented or otherwise modified, this "**Note**") shall be paid in the amounts and on the dates specified in the Order to the account designated by the Lender. The Borrower further agrees to pay interest to the Lender on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Order.

Unless otherwise defined herein, all capitalized terms used herein shall have the meaning ascribed to them in that certain Interim DIP Order dated [        ], 2011 (as amended, restated, amended and restated, superseded, supplemented or otherwise modified by a final order issued by the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), the "**Order**"), upon the motion, dated September 29, 2011, of Graceway Pharma Holding Corp., Graceway Holdings, LLC, the Borrower, and the other debtors and debtors in possession in the Chapter 11 Cases, seeking an entry of an interim order pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(3), 364(d)(1), 364(e), 507 and 552 of Chapter 11 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**") and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure.

This Note is subject to the provisions of the Order. This Note is secured and guaranteed as provided in the Order and that certain Guaranty Agreement, dated as of the date hereof (the "**Guaranty**") (a copy of which is attached hereto as Exhibit A), by the guarantors party thereto in favor of the Lender. Reference is hereby made to the Order and the Guaranty for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the Lender in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Order.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Subject to the provisions of the Order, the Borrower may at any time without prior notice to the Lender prepay the Tranche A Intercompany Loan in whole or in part, in each instance, without penalty or premium. Any amount repaid under this Note may not be reborrowed.

Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Note shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

Without limitation of any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Note and to decide any claims or disputes which may arise or result from, or be connected with, this Note, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereto hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such proceeding; *provided, however*, that, if the Bankruptcy Court is closed, all proceedings arising out of or relating to this Note shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such proceeding. The parties hereto consent to service of process by mail or any other manner permitted by law.

In the event of any inconsistency or conflict between the terms, conditions and provisions of this Note and the terms, conditions and provisions of the Order, the terms, conditions and provisions of the Order shall control.

**THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS NOTE.**

*[Signature Page Follows]*



GRACEWAY PHARMACEUTICALS, LLC

By

---

Name:

Title:

Exhibit A

Guaranty Agreement

Attached.

TRANCHE B INTERCOMPANY TERM LOAN NOTE

\$2,200,000

September 30, 2011

FOR VALUE RECEIVED, the undersigned, GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company (the "**Borrower**"), hereby unconditionally promises to pay to GRACEWAY CANADA COMPANY, a Nova Scotia unlimited liability company, and its successors and assigns (the "**Lender**"), at the office of the Lender or at such other place as the Lender may from time to time designate to the Borrower in writing, in lawful money of the United States and in immediately available funds, the principal amount of TWO MILLION TWO HUNDRED THOUSAND DOLLARS (\$2,200,000), or, if less, the unpaid principal amount of the Tranche B Intercompany Loan of the Lender as may be outstanding under the Order (as defined below). The principal amount of this Tranche B Intercompany Term Loan Note (as amended, restated, amended and restated, supplemented or otherwise modified, this "**Note**") shall be paid in the amounts and on the dates specified in the Order to the account designated by the Lender. The Borrower further agrees to pay interest to the Lender on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Order.

Unless otherwise defined herein, all capitalized terms used herein shall have the meaning ascribed to them in that certain Interim DIP Order dated [      ], 2011 (as amended, restated, amended and restated, superseded, supplemented or otherwise modified by a final order issued by the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), the "**Order**"), upon the motion, dated September 29, 2011, of Graceway Pharma Holding Corp., Graceway Holdings, LLC, the Borrower, and the other debtors and debtors in possession in the Chapter 11 Cases, seeking an entry of an interim order pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(3), 364(d)(1), 364(e), 507 and 552 of Chapter 11 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**") and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure.

This Note is subject to the provisions of the Order. This Note is secured and guaranteed as provided in the Order and that certain Guaranty Agreement, dated as of the date hereof (the "**Guaranty**") (a copy of which is attached hereto as Exhibit A), by the guarantors party thereto in favor of the Lender. Reference is hereby made to the Order and the Guaranty for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the Lender in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Order.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Subject to the provisions of the Order, the Borrower may at any time without prior notice to the Lender prepay the Tranche B Intercompany Loan in whole or in part, in each instance, without penalty or premium. Any amount repaid under this Note may not be reborrowed.

Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Note shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

Without limitation of any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Note and to decide any claims or disputes which may arise or result from, or be connected with, this Note, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereto hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such proceeding; *provided, however*, that, if the Bankruptcy Court is closed, all proceedings arising out of or relating to this Note shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such proceeding. The parties hereto consent to service of process by mail or any other manner permitted by law.

In the event of any inconsistency or conflict between the terms, conditions and provisions of this Note and the terms, conditions and provisions of the Order, the terms, conditions and provisions of the Order shall control.

**THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS NOTE.**

*[Signature Page Follows]*

GRACEWAY PHARMACEUTICALS, LLC

By \_\_\_\_\_

Name:

Title:

Exhibit A

Guaranty Agreement

Attached.

## GUARANTY AGREEMENT

As an inducement to GRACEWAY CANADA COMPANY, a Nova Scotia unlimited liability company (“*we*,” “*our*” or “*us*”), to make available to GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company (the “*Borrower*”), the Intercompany Loan upon and subject to the terms of that certain Interim DIP Order dated September [ ], 2011 (as amended, restated, amended and restated, superseded, supplemented or otherwise modified by a final order issued by the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”), the “*Order*”), upon the motion, dated September 29, 2011, of Graceway Holding Corp., Graceway Holdings, LLC, the Borrower, and the other debtors and debtors in possession in the Chapter 11 Cases, seeking an entry of an interim order pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(3), 364(d)(1), 364(e), 507 and 552 of Chapter 11 of title 11 of the United States Code (as amended, the “*Bankruptcy Code*”) and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure, as evidenced by (a) that certain Tranche A Intercompany Term Loan Note dated September 30, 2011 (the “*Tranche A Note*”) made by the Borrower in favor of us and (b) that certain Tranche B Intercompany Term Loan Note dated September 30, 2011 made by the Borrower in favor of us (the “*Tranche B Note*”, together with the Tranche A Note, collectively, the “*Notes*”), each of the undersigned and their successors and assigns, do jointly and severally, hereby agree to be bound by each and every covenant, term, condition, agreement and undertaking contained and set forth in the Order, the Notes (including, without limitation, the timely payment and performance of all of the Borrower’s obligations thereunder) and this Guaranty Agreement, and the full and prompt payment of any amounts, costs, expenses, claims, charges or liabilities incurred by us under the Order, the Notes or this Guaranty Agreement, including attorneys’ fees and costs, related to the making, performance, or enforcement of the Intercompany Loan, the Notes or this Guaranty Agreement (collectively, the “*Guaranteed Obligations*”), and agree that this Guaranty Agreement shall be construed as though the undersigned and each of them executed agreements containing the identical terms and conditions of the Tranche A Note and the Tranche B Note, respectively. The obligations of the undersigned are subject to the provisions of the Order. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given them in the Order.

As an original and independent obligation under this Guaranty Agreement, the undersigned shall jointly and severally (a) indemnify us, and keep us indemnified, against all costs, losses, expenses and liabilities of whatever kind resulting from the failure by the Borrower to make due and punctual payment of any of the Guaranteed Obligations or resulting from any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective against the Borrower (including, but without limitation, all legal and other costs, charges and expenses incurred by us in connection with preserving or enforcing, or attempting to preserve or enforce, our rights under this Guaranty Agreement); and (b) pay on demand the amount of such costs, losses, expenses and liabilities whether or not we have attempted to enforce any rights against any other Person or otherwise.

If more than one individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association or joint venture (each, a “*Person*”) has executed this Guaranty Agreement, the term “the undersigned” as used herein, shall refer to

each such Person, and the liability of each of the undersigned hereunder shall be joint and several and primary as sureties.

Subject to the terms of the Order, the undersigned hereby agree that without the consent of or notice to any of the undersigned and without affecting any of the obligations of the undersigned hereunder, (a) any guarantor of or party to the Notes may be released, substituted or added, (b) any right or remedy under the Order, the Notes, this Guaranty Agreement or any other instrument or agreement between us and the Borrower may be exercised, not exercised, impaired, modified, limited, destroyed or suspended and (c) we or any other Person may deal in any manner with the Borrower, any of the undersigned or any other Person.

Subject to the terms of the Order, should the Borrower or any of the undersigned be in breach or default under the Order, the Notes or this Guaranty Agreement, we may proceed directly against any or each of the undersigned without first proceeding against or notifying the Borrower and without proceeding against any others of the undersigned. Subject to the terms of the Order, upon notice from us that the Borrower has failed to pay monies due and owing to us under the Notes, the Order or this Guaranty Agreement, any and each of the undersigned agree to cure any monetary default within three (3) Business Days from such notice.

Payment by any of the undersigned in respect of the Guaranteed Obligations shall be made to us in immediately available funds at our office or at such other place which we may specify in writing from time to time. The undersigned shall make all payments in respect of the Guaranteed Obligations to us free and clear of, and without deduction or withholding for or on account of, (i) any setoff, counterclaim, defense, restrictions or conditions of any kind; (ii) any present or future duties, taxes, levies, imposts, fees, deductions, assessments, withholdings or other charges of any nature whatsoever or interest, penalties or other amounts in respect thereof imposed or levied by or on behalf of the federal government of Canada, the United States of America or of any state, province or territory thereof or any authority or agency therein or thereof having power to tax; or (iii) any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Guaranty Agreement, the Notes or the Order unless such deduction or withholding is required by law or the administrative practice of any taxation authority.

Notice to and demand upon the Borrower or any of the undersigned shall be deemed notice to or demand upon the Borrower and all of the undersigned, and no notice or demand need be made to or upon any or all of the undersigned. The cessation of or release from liability of the Borrower or any of the undersigned shall not relieve any other of the undersigned from liability hereunder or under the Notes, except to the extent that all monies owed to us under the Notes have been paid in full.

This Guaranty Agreement constitutes a guaranty of payment and performance and not of collection, and each of the undersigned specifically waives any obligation we may have to proceed against the Borrower or any of the undersigned on any money or property held by the Borrower, any of the undersigned or by any other Person as collateral security, by way of set off or otherwise. Subject to the terms of the Order, the undersigned further agree that this Guaranty Agreement shall continue to be effective or be reinstated, as the case may be, if at any time



payment or any of the guaranteed obligations is rescinded or must otherwise be restored or returned by us upon the insolvency, bankruptcy or reorganization of the Borrower or any of the undersigned, all as though such payment has not been made.

We may at any time and from time to time, without notice to or the consent of the undersigned, and without impairing or releasing, discharging or modifying the undersigned's liabilities hereunder, (a) change the manner, place, time or terms of payment or performance of or interest rates on, or other terms relating to, any of the Guaranteed Obligations; (b) renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Guaranteed Obligations, any other guaranties, or any security for any Guaranteed Obligations or guaranties; (c) apply any and all payments by whomever paid or however realized including any proceeds of any collateral, to any obligations of the Borrower in such order, manner and amount as we may determine in our sole discretion; (d) settle, compromise or deal with any other person, including the Borrower or the undersigned, with respect to any Guaranteed Obligations in such manner as we deem appropriate in our sole discretion; (e) substitute, exchange or release any security or guaranty; or (f) take such actions and exercise such remedies hereunder as provided herein.

The obligations of each undersigned hereunder shall not be affected or impaired by any act, omission, matter or thing whatsoever (other than payment of monies owed to us under the Notes), occurring before, upon or after any demand for payment hereunder (and whether or not known to any of the undersigned or us) which, but for this provision, might constitute a whole or partial defense to a claim against any undersigned hereunder or might operate to release or otherwise exonerate any undersigned from any of its obligations hereunder or otherwise affect such obligations, whether occasioned by our default or otherwise.

The undersigned expressly acknowledge that the obligations hereunder survive the termination of the Notes and/or the Order.

Any waiver, extension of time or other indulgence granted by us or our agents, successors or assigns, with respect to the Notes or the Order shall in no way modify or amend this Guaranty Agreement which shall be continuing, absolute, unconditional and irrevocable. Subject to the terms of the Order, this Guaranty Agreement may be assigned by us voluntarily or by operation of law without reducing or modifying the liability of the undersigned hereunder. Absent our written consent, the undersigned may not assign their obligations under this Guaranty Agreement.

Our failure to enforce all or any portion of our rights under this Guaranty Agreement shall not constitute a waiver of our ability to do so at any point in the future.

Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Guaranty Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

Without limitation of any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Guaranty

Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Guaranty Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereto hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such proceeding; *provided, however*, that, if the Bankruptcy Court is closed, all proceedings arising out of or relating to this Guaranty Agreement shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such proceeding. The parties hereto consent to service of process by mail or any other manner permitted by law.

**THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS GUARANTY AGREEMENT.**

Subject to the terms of the Order, if we choose to proceed against the undersigned under this Guaranty Agreement, and we prevail, the undersigned shall reimburse us our costs and expenses associated with the litigation, including our reasonable attorneys' fees, court costs and expenses.

The undersigned hereby specifically waives, presentment, notice, notice of protest, demand, notice of dishonor, and notice of default with respect to any obligation set forth in the Notes, the Order or this Guaranty Agreement.

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Guaranty Agreement, the Notes or the Order, it becomes necessary to convert into the currency of such jurisdiction (the “*Judgment Currency*”) any amount due under this Guaranty Agreement or under any of the Notes or the Order in any currency other than the Judgment Currency (the “*Currency Due*”), then conversion shall be made at the exchange rate determined by us, at which we are able, on the relevant date, to purchase the Currency Due with the Judgment Currency prevailing on the Business Day before the day of which judgment is given. In the event that there is a change in the exchange rate prevailing between the Business Day before the day on which the judgment is given and the date of receipt by us of the amount due, the undersigned will, on the date of receipt by us, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by us on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by us is the amount then due under this Guaranty Agreement or under any of the Notes or the Order in the Currency Due. If the amount of the Currency Due which we are able to purchase is less than the amount of the Currency Due originally due to it, the undersigned shall indemnify and save us harmless from and against loss or damage arising as a result of such deficiency. The indemnity contained herein shall constitute an obligation separate and independent from the other obligations contained in this Guaranty Agreement or under any of the Notes or the Order, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by

us from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Guaranty Agreement or under any of the Notes or the Order or under any judgment or other order.

In the event of any inconsistency or conflict between the terms, conditions and provisions of this Guaranty Agreement and the terms, conditions and provisions of the Order, the terms, conditions and provisions of the Order shall control.

This Guaranty Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Guaranty Agreement by facsimile transmission or e-mail (*e.g.*, .pdf or .tif files) shall be as effective as delivery of a manually executed counterpart hereof.

*[Signature pages follow]*

IN WITNESS WHEREOF, each of the undersigned has executed and delivered this Guaranty Agreement as of this \_\_\_\_ day of September, 2011.

**GUARANTORS:**

GRACEWAY PHARMA HOLDING CORP.,  
a Delaware corporation

By: \_\_\_\_\_

Name: .

Title:

GRACEWAY HOLDINGS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: .

Title:

CHESTER VALLEY HOLDINGS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: .

Title:

CHESTER VALLEY PHARMACEUTICALS,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: .

Title:

GRACEWAY CANADA HOLDINGS, INC.,  
a Delaware corporation

By: \_\_\_\_\_

Name: .

Title:

[Signature Page to Guaranty Agreement]

GRACEWAY INTERNATIONAL, INC.,  
a Delaware corporation

By: \_\_\_\_\_

Name: .

Title:

[Signature Page to Guaranty Agreement]

ACCEPTED AND AGREED

as of this \_\_\_\_ day of September, 2011

GRACEWAY CANADA COMPANY,  
as Lender

By: \_\_\_\_\_

Name: .

Title:

[Signature Page to Guaranty Agreement]

**EXHIBIT B**  
**Intercreditor Agreement**

T. 2  

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**EXECUTED DOCUMENT**

**INTERCREDITOR AGREEMENT**

**dated as of May 3, 2007**

**among**

**GRACEWAY HOLDINGS, LLC,**

**GRACEWAY PHARMACEUTICALS, LLC,**

**BANK OF AMERICA, N.A.,  
as First Lien Collateral Agent,**

**DEUTSCHE BANK TRUST COMPANY AMERICAS  
as Second Lien Collateral Agent,**

**and**

**GOLDMAN SACHS CREDIT PARTNERS, L.P.,  
as Control Agent**  

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## INTERCREDITOR AGREEMENT

**INTERCREDITOR AGREEMENT** dated as of May 3, 2007 among GRACEWAY HOLDINGS, LLC, a Delaware limited liability company ("Holdings"), GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company ("Borrower"), BANK OF AMERICA, N.A., in its capacity as collateral agent for the First Lien Obligations (such term and each other capitalized term used but not defined in this introductory statement having the meaning assigned thereto in Article I below), including its successors and assigns from time to time (the "First Lien Collateral Agent"), DEUTSCHE BANK TRUST COMPANY AMERICAS, in its capacity as collateral agent for the Second Lien Obligations, including its successors and assigns from time to time (the "Second Lien Collateral Agent"), and BANK OF AMERICA, N.A., as agent on behalf of the First Lien Collateral Agent and the Second Lien Collateral Agent for the limited purpose of perfecting the Liens of the First Lien Collateral Agent and the Second Lien Collateral Agent in the Control Collateral, including its successors and assigns from time to time (the "Control Agent").

Pursuant to or in connection with the Acquisition Agreement (as defined below), (i) the Borrower acquired (the "Acquisition") all of the assets of a business known as 3M Pharmaceuticals Americas (as defined in the Acquisition Agreement, the "Acquired Business") from 3M Company, 3M Innovative Properties Company and Riker Laboratories, Inc.; (ii) Sponsor, affiliates of the Sponsor, Gracetre Investments LLC, a Tennessee limited liability company, limited partners of the Sponsor and its affiliates and certain other investors (collectively, the "Equity Investors") acquired certain equity interests in Holdings and (iii) (a) Chester Valley Holdings, Inc., a Delaware corporation ("CV Holdings"), converted to a Delaware limited liability company; (b) CV Holdings' unitholders contributed their equity to Holdings in exchange for equity of Holdings and (c) Holdings contributed the equity of CV Holdings to Borrower.

Holdings and Borrower propose to enter into a credit agreement dated as of May 3, 2007 (as amended, restated, modified, supplemented or Refinanced from time to time, the "Initial First Lien Credit Agreement") among Holdings, Borrower, the banks and other lending institutions from time to time party thereto (each a "First Lien Lender" and, collectively, the "First Lien Lenders"), Bank of America, N.A., as an L/C Issuer (in such capacity, the "L/C Issuer") and as Swing Line Lender, as Syndication Agent and as Administrative Agent (together with its successor or successors in each such capacity, the "Swing Line Lender", the "First Lien Syndication Agent" and the "First Lien Administrative Agent", respectively).

Certain First Lien Lenders and their Affiliates acting as Swap Creditors (as defined in the Initial First Lien Credit Agreement) may from time to time provide forward rate agreements, options, swaps, caps, floors and other Swap Agreements (as defined in the Initial First Lien Credit Agreement) to the Loan Parties. In addition, certain First Lien Lenders and their Affiliates may provide credit cards, stored value cards or treasury and cash management services to, for the benefit of or otherwise in respect of the Borrower and its Subsidiaries (including controlled disbursement, intraday credit, Automated Clearing House (ACH) services, foreign exchange services, return items, overdrafts, daylight overdrafts, zero balance arrangements and interstate depository network services). The First Lien Lenders, or their Affiliates providing various treasury management services which the Borrower may from time to time notify the First Lien Administrative Agent, the Syndication Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents, each Issuing Lender, the Swing Line Lender, the Administrative Agent and the First Lien Collateral Agent and their respective successors and assigns are herein referred to individually as a "First Lien Credit Party" and collectively as the "First Lien Credit Parties", and each First Lien Credit Party and each Swap

Creditor and their respective successors and assigns are herein referred to individually as a "First Lien Finance Party" and collectively as the "First Lien Finance Parties".

To induce the First Lien Lenders to enter into the Initial First Lien Credit Agreement and the other Loan Documents (as defined in the Initial First Lien Credit Agreement and collectively with the Initial First Lien Credit Agreement, the "First Lien Credit Documents"), certain First Lien Lenders and their Affiliates to enter into agreements or other instruments to provide the credit cards, stored value cards or treasury and cash management services referred to above which the Borrower may from time to time notify the First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents and the Swap Creditors to enter into Swap Agreements permitted under the First Lien Credit Agreement (collectively with the First Lien Credit Documents, the "First Lien Finance Documents"), and as a condition precedent to the obligations of the First Lien Lenders under the Initial First Lien Credit Agreement, Holdings and certain Subsidiaries of the Borrower (each a "Subsidiary Guarantor" and, collectively, the "Subsidiary Guarantors" and, together with Holdings, the "Guarantors", and the Guarantors and each other person that becomes a guarantor of the First Lien Obligations and the respective successors and permitted assigns of each of the foregoing, together with the Borrower, each a "Loan Party" and, collectively, the "Loan Parties") have agreed, jointly and severally, to provide a guaranty of all obligations of the Borrower and the other Loan Parties under or in respect of the First Lien Finance Documents.

Holdings and Borrower also propose to enter into a Credit Agreement dated as of May 3, 2007 (as amended, restated, modified, supplemented or Refinanced from time to time, the "Initial Second Lien Credit Agreement") among Holdings, Borrower, the banks and other lending institutions from time to time party thereto (each a "Second Lien Lender" and, collectively, the "Second Lien Lenders") and Goldman Sachs Credit Partners L.P., as Syndication Agent and as Administrative Agent (together with its successor or successors in each such capacity, the "Second Lien Syndication Agent" and the "Second Lien Administrative Agent", respectively).

To induce the Second Lien Lenders to enter into the Initial Second Lien Credit Agreement and the other Loan Documents (as defined in the Initial Second Lien Credit Agreement) (collectively with the Initial Second Lien Credit Agreement, the "Second Lien Credit Documents"), and as a condition precedent to the obligations of the Second Lien Lenders under the Initial Second Lien Credit Agreement, the Guarantors have agreed, jointly and severally, to provide a guaranty of all obligations of the Borrower and the other Loan Parties under or in respect of the Initial Second Lien Credit Agreement.

As a further condition precedent to (i) the obligations of the First Lien Lenders under the Initial First Lien Credit Agreement, each Loan Party has agreed or will agree to grant a continuing security interest in favor of the First Lien Collateral Agent in and to the Collateral to secure the First Lien Obligations, and (ii) the obligations of the Second Lien Lenders under the Initial Second Lien Credit Agreement, each Loan Party has agreed or will agree to grant a continuing security interest in favor of the Second Lien Collateral Agent in and to the Collateral to secure the Second Lien Obligations.

The First Lien Credit Documents and the Second Lien Credit Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral. In order to induce the First Lien Collateral Agent and the First Lien Finance Parties to consent to the Loan Parties incurring the Second Lien Obligations and to induce the First Lien Finance Parties to extend credit and other financial accommodations to or for the benefit of one or more Loan Parties, the Second Lien Collateral Agent on behalf of the Second Lien Lenders has agreed to the lien subordination, intercreditor and other provisions set forth in this Agreement.

Accordingly, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.01 Definitions.** Terms defined in the introductory section hereof have the respective meanings set forth therein, unless otherwise defined in this Section 1.01. As used in this Agreement, the following additional terms have the following meanings:

"Acquisition Agreement" means the Acquisition Agreement dated as of November 8, 2006 among 3M Company, a Delaware corporation, 3M Innovative Properties Company, a Delaware corporation, Riker Laboratories, Inc., a Delaware corporation and Graceway Pharmaceuticals, Inc., a Delaware corporation, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. As used herein, the term "Control" means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting shares or their equivalent, by contract or otherwise or (ii) with respect to any Person having voting shares or their equivalent, the possession, directly or indirectly, of the power to vote 10% or more of the Voting Securities of such Person.

"Agreement" means this Intercreditor Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Attributable Indebtedness" means, at any date, (i) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (ii) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Capital Lease and (iii) in respect of any Sale/Leaseback Transaction, the lesser of (A) the present value, discounted in accordance with GAAP at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor be extended) and (B) the fair market value of the assets subject to such transaction.

"Bankruptcy Code" means title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bankruptcy Law" means the Bankruptcy Code and all other liquidation, receivership, moratorium, conservatorship, assignment for the benefit of creditors, insolvency or similar federal, state or foreign law for the relief of debtors.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the State of New York, except that (i) when used in with respect to any action taken by or with respect to any L/C Issuer, the term "Business Day" shall not include any day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the jurisdiction where such L/C Issuer's lending office is

located, and (ii) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, or the interest period for, a Eurodollar Loan (as defined in the First Lien Credit Agreement or the Second Lien Credit Agreement), or a notice by the Borrower with respect to any such borrowing, payment, prepayment or interest period, such day shall also be a day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Capital Lease" of any Person means any lease of (or other arrangement conveying the right to use) property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"Capital Lease Obligations" means, with respect to any Person, all obligations of such Person as lessee under Capital Leases, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP.

"Cash Management Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person in respect of credit cards, stored value cards or treasury and cash management services to, for the benefit of or otherwise in respect of any Person (including controlled disbursement, intraday credit, Automated Clearing House (ACH) services, foreign exchange services, return items, overdrafts, daylight overdrafts, zero balance arrangements and interstate depository network services) provided by any First Lien Lender or its Affiliates, including obligations for the payment of agreed interest and reasonable, fees, charges, expenses and disbursements in connection therewith.

"Collateral" means all of the assets and property of any Loan Party, whether tangible or intangible, constituting both First Lien Collateral and Second Lien Collateral.

"Control Collateral" means any Collateral consisting of any Certificated Security, Instrument, Investment Property, Deposit Accounts (each as defined in the UCC), cash and any other Collateral as to which a first priority Lien shall or may be perfected through possession or control by the secured party or any agent therefor.

"Controlled Account" means those certain Deposit Accounts (as defined in the UCC) of any Loan Party subject to Depositary Bank Agreements under the terms of the First Lien Collateral Documents and the Second Lien Collateral Documents.

"Debt Equivalents" of any Person means (i) any Equity Interest of such Person which by its terms (or by the terms of any security for which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or otherwise (including an event which would constitute a change of control), (A) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund or otherwise or (B) is convertible into or exchangeable for Indebtedness or Debt Equivalents, in each case in whole or in part, on or prior to the 90 day anniversary of the later of the Revolving Termination Date or the Term B Maturity Date (each as defined in the First Lien Credit Agreement) and (ii) if such Person is a Subsidiary of the Borrower but not a Subsidiary Guarantor, any Preferred Stock of such Person; provided, however, that any Equity Interests that would not constitute Debt Equivalents but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change of control or an asset disposition occurring prior to the 180th day after the later of the Revolving Termination Date or the Term B Maturity Date (each as defined in the First Lien Credit Agreement) shall not constitute Debt Equivalents if such Equity Interests provide that the issuer thereof will not redeem any such Equity

Interests pursuant to such provisions prior to the payment in full of the First Lien Credit Obligations (other than contingent indemnity obligations).

"DIP Financing" has the meaning specified in Section 6.01.

"Discharge of First Lien Obligations" means, except to the extent otherwise provided in Section 5.06, (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the First Lien Credit Documents and termination of all commitments to lend or otherwise extend credit under the First Lien Credit Documents, (ii) payment in full in cash of all other First Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Insolvency or Liquidation Proceeding), (iii) termination, cancellation or cash collateralization (in an amount equal to 102% of the maximum aggregate amount which may be drawn, or in such lower amount as may be reasonably satisfactory to the First Lien Collateral Agent) of, all letters of credit issued or deemed issued under the First Lien Credit Documents and (iv) termination or cash collateralization (in an amount reasonably satisfactory to the First Lien Collateral Agent) of any Swap Agreement and the payment in full in cash of all Swap Obligations, subject, with respect to the aggregate amount of the items set forth in the foregoing clauses (i) through (iii), to the limitations set forth in the definition of Maximum First Lien Indebtedness.

"Disposition" has the meaning specified in Section 5.01(a)(ii).

"Equity Interests" means all shares of capital stock, partnership interests (whether general or limited), limited liability company membership interests, beneficial interests in a trust and any other interest or participation that confers on a Person the right to receive a share of profits or losses, or distributions of assets, of an issuing Person, but excluding any debt securities convertible into such Equity Interests.

"Exercise of Remedies" has the meaning set forth in Section 5.01(a)(i).

"First Lien Administrative Agent" means Bank of America, N.A., as Administrative Agent under the First Lien Credit Agreement and the other First Lien Credit Documents, together with any successor Administrative Agent thereunder and, if there is no acting Administrative Agent under the First Lien Credit Agreement, the Required First Lien Lenders.

"First Lien Claimholders" means, at any relevant time, the holders of First Lien Obligations at such time, including without limitation each First Lien Credit Party and each Swap Creditor.

"First Lien Collateral" means all of the assets and property of any Loan Party, whether real, personal or mixed, with respect to which a Lien is granted as security for any First Lien Obligations.

"First Lien Collateral Agent" means Bank of America, N.A., as First Lien Collateral Agent for the benefit of the First Lien Finance Parties, together with any successor First Lien Collateral Agent and, if there is no acting First Lien Collateral Agent under the First Lien Finance Documents, the Required First Lien Lenders.

"First Lien Collateral Documents" means the Collateral Documents (as defined in the First Lien Credit Agreement as amended from time to time in accordance herewith) and any other agreement, document or instrument pursuant to which a Lien is granted securing any First Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"First Lien Credit Agreement" means (i) the Initial First Lien Credit Agreement and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein) or Refinance in whole or in part the indebtedness and other obligations outstanding under the (x) Initial First Lien Credit Agreement or (y) any subsequent First Lien Credit Agreement, unless such agreement or instrument expressly provides that it is not intended to be and is not a First Lien Credit Agreement hereunder. Any reference to the First Lien Credit Agreement hereunder shall be deemed a reference to any First Lien Credit Agreement then in existence.

"First Lien Credit Documents" means the First Lien Credit Agreement and the Loan Documents (as defined in the First Lien Credit Agreement as amended from time to time in accordance herewith) and each of the other agreements, documents and instruments providing for or evidencing any other First Lien Credit Obligation, and any other document or instrument executed or delivered at any time in connection with any First Lien Credit Obligations, including any intercreditor, accession or joinder agreement among holders of First Lien Credit Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement,

"First Lien Credit Obligations" means, with respect to each Loan Party, without duplication:

(i) in the case of the Borrower, all principal of and interest (including, without limitation, any interest which accrues after any Insolvency or Liquidation Proceeding with respect to the Borrower, whether or not allowed or allowable as a claim in any such proceeding) on any Loan or L/C Obligation under, or any Note issued pursuant to, and all as defined in, the First Lien Credit Agreement or any other First Lien Credit Document;

(ii) all fees, expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party pursuant to the First Lien Credit Agreement or any other First Lien Credit Document;

(iii) all expenses of the First Lien Administrative Agent, the First Lien Syndication Agent or the First Lien Collateral Agent as to which one or more of such agents have a right to reimbursement by such Loan Party pursuant to the First Lien Credit Agreement or any other First Lien Credit Document;

(iv) all amounts paid by any Indemnitee (as defined in the First Lien Credit Agreement) as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04 of the First Lien Credit Agreement or under any other similar provision of any other First Lien Credit Document; and

(v) in the case of Holdings and each Subsidiary Guarantor, all amounts now or hereafter payable by Holdings or such Subsidiary Guarantor and all other obligations or liabilities now existing or hereafter arising or incurred on the part of Holdings or such Subsidiary Guarantor pursuant to the First Lien Credit Agreement or any other First Lien Credit Document;



together in each case with all renewals, modifications, consolidations or extensions thereof.

"First Lien Credit Party" means each First Lien Lender (including any Affiliate of a First Lien Lender in respect of any Cash Management Obligations even if such First Lien Lender for any reason ceases after the execution of the agreement or instrument governing such Cash Management Obligation to be a First Lien Lender), each L/C Issuer, the First Lien Administrative Agent, the First Lien Syndication Agent, the First Lien Collateral Agent and each Indemnitor (as defined in the First Lien Credit Agreement) in respect of First Lien Credit Obligations and their respective successors and assigns, and "First Lien Credit Parties" means any two or more of them, collectively.

"First Lien Finance Document" means (i) each First Lien Credit Document, (ii) each Swap Agreement between one or more Loan Parties and a Swap Creditor evidencing Swap Obligations permitted under the First Lien Credit Agreement and (iii) each agreement or instrument governing Cash Management Obligations between any Loan Party and a First Lien Lender or one or more of its Affiliates (in each case as amended from time to time in accordance herewith) pursuant to which the Borrower may from time to time notify the First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents, and each of the other agreements, documents and instruments providing for or evidencing any other First Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any First Lien Obligations, including any intercreditor, accession or joinder agreement among holders of First Lien Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement, and "First Lien Finance Documents" means all of them, collectively.

"First Lien Finance Obligations" means all Obligations outstanding under any agreement or other instrument governing Cash Management Obligations of any Loan Party owed or owing to a First Lien Claimholder or one or more of its Affiliates (even if such First Lien Claimholder for any reason ceases after the execution of the agreement or instrument governing such Cash Management Obligation to be a First Lien Claimholder) which the Borrower may from time to time notify the First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the first Lien Finance Documents.

"First Lien Lenders" means the "Lenders" under and as defined in the First Lien Credit Agreement, including the Swing Line Lender and each L/C Issuer in their respective capacities as such under, and as defined, in the First Lien Credit Agreement, or any Affiliate of any First Lien Lender from time to time party to one or more agreements or other instruments governing or evidencing Cash Management Obligations with a Loan Party (even if any such First Lien Lender for any reason ceases after the execution of such agreement or instrument to be a First Lien Lender thereunder), and their respective successors and assigns.

"First Lien Obligations" means all Obligations outstanding under (i) the First Lien Credit Agreement and the other First Lien Credit Documents (including all First Lien Credit Obligations), (ii) any agreement or other instrument governing Cash Management Obligations of any Loan Party owed or owing to a First Lien Claimholder or one or more of its Affiliates (even if such First Lien Claimholder for any reason ceases after the execution of the agreement or instrument governing such Cash Management Obligation to be a First Lien Claimholder) which the Borrower may from time to time notify the First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents and (iii) all Swap Agreements of one or more Loan Parties permitted under the First Lien Credit Agreement owed or owing to any Swap Creditor (it being understood, for avoidance of doubt, that Swap Obligations of a Person that is both a First Lien Claimholder and a Second Lien Claimholder at the time such Swap Agreement was entered into by any

Loan Party shall be considered First Lien Obligations); provided that the aggregate principal amount of, without duplication, any revolving credit commitments, revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments (excluding, in any event, Cash Management Obligations and Swap Obligations) provided for under the First Lien Credit Agreement or any other First Lien Credit Document (or any Refinancing thereof) in excess of \$705,000,000 less (A) the amount of all mandatory prepayments, voluntary prepayments and scheduled repayments applied to any term loans, (B) the amount of all mandatory prepayments, voluntary prepayments and scheduled repayments of any revolving loans or letters of credit, to the extent accompanied by a corresponding reduction in the applicable commitment amount, (C) the aggregate amount of any Incremental Second Lien Loans (as defined in the Second Lien Credit Agreement as in effect on the date hereof and (D) the aggregate amount of any Incremental Mezzanine Loans (as such term is used in the First Lien Credit Agreement as in effect on the date hereof) (excluding reductions in sub-facility commitments not accompanied by a corresponding reduction in the facility commitment amount) (the "Maximum First Lien Indebtedness"), shall not constitute First Lien Obligations for purposes of this Agreement, "First Lien Obligations" shall include (i) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant First Lien Credit Document and (ii) all fees, costs and charges incurred in connection with the First Lien Credit Documents and provided for thereunder, in each case whether before or after commencement of an Insolvency or Liquidation Proceeding irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central bank).

"Guaranty Obligation" means, with respect to any Person, without duplication, any obligation (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guarantying, intended to guaranty, or having the economic effect of guarantying, any Indebtedness of any other Person in any manner, whether direct or indirect, and including, without limitation, any obligation, whether or not contingent, (i) to purchase any such Indebtedness or any property constituting security therefor, (ii) to advance or provide funds or other credit support for the payment or purchase of such Indebtedness or obligation or to maintain working capital, solvency or any other balance sheet condition of such other Person (including, without limitation, maintenance agreements, support agreements, comfort letters, take or pay arrangements, put agreements, performance guaranties or similar agreements or arrangements) for the benefit of the holder of Indebtedness of such other Person, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness or (iv) to otherwise assure or hold harmless the owner of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (i) all obligations of such Person for borrowed money;
- (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (iii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);
- (iv) all obligations, other than intercompany items, of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and accrued expenses arising in the ordinary course of business and due within six months of the incurrence thereof);
- (v) the Attributable Indebtedness of such Person in respect of Capital Lease Obligations, Sale/Leaseback Transactions and Synthetic Lease Obligations (regardless of whether accounted for as indebtedness under GAAP);
- (vi) all obligations, contingent or otherwise, of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, letter of guaranty, bankers' acceptance, surety bond, performance bond or similar instrument;
- (vii) all obligations of the types specified in clauses (i) through (vi) above of others secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not such obligation is assumed by such Person; provided that the amount of any Indebtedness of others that constitutes Indebtedness of such Person solely by reason of this clause (vii) shall not for purposes of this Agreement exceed the greater of the book value or the fair market value of the properties or assets subject to such Lien;
- (viii) all Guaranty Obligations of such Person;
- (ix) all Debt Equivalents of such Person; and
- (x) the Indebtedness of any other Person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person would be liable therefor under applicable Law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such person shall not be liable therefor;

provided that (i) Indebtedness shall not include (A) deferred compensation arrangements, (B) earn-out obligations until matured or earned, (C) non-compete or consulting obligations incurred in connection with Permitted Acquisitions, (D) obligations under any Swap Agreements, (E) deemed Indebtedness pursuant to FASB 133 or 150 or (F) any payment obligations under Sections 4.1 and 4.4 of the Technology Access Agreement and (ii) the amount of any Limited Recourse Indebtedness of any Person shall be equal to the fair market value of any assets securing such Indebtedness or to which such Indebtedness is otherwise recourse.

"Insolvency or Liquidation Proceeding" means (i) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law with respect to any Loan Party, (ii) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Loan Party or with respect to a material portion of their respective assets, (iii) any liquidation, dissolution, reorganization or winding up of any Loan Party whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (iv) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Loan Party.

"L/C Issuer" means (i) Bank of America, N.A., in its capacity as issuer of Letters of Credit under Section 2.05 of the First Lien Credit Agreement, and its successor or successors in such capacity and (ii) any other First Lien Lender which the Borrower shall have designated as an "L/C Issuer" under the First Lien Credit Agreement by notice to the First Lien Administrative Agent.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing). Solely for the avoidance of doubt, the filing of a Uniform Commercial Code financing statement that is a protective lease filing in respect of an operating lease that does not constitute a security interest in the leased property or otherwise give rise to a Lien does not constitute a Lien solely on account of being filed in a public office.

"Limited Recourse Indebtedness" means with respect to any Person, Indebtedness to the extent: (i) such Person (A) provides no credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (B) is not directly or indirectly liable as a guarantor or otherwise or (C) does not constitute the lender; and (ii) no default with respect thereto would permit upon notice, lapse of time or both any holder of any other Indebtedness of such Person to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

"Loan Party" means each of Holdings, the Borrower and each Subsidiary Guarantor, and "Loan Parties" means any combination of the foregoing.

"Obligations" means, when used alone herein and not a part of any other defined term, any and all obligations, liquidated or contingent, with respect to the payment of (i) any principal of or interest or premium on any Indebtedness, including any reimbursement obligation in respect of any letter of credit, or any other liability, including, without limitation, interest and premiums accruing after the filing of a petition initiating any proceeding under the Bankruptcy Laws irrespective of whether a claim for such interest or premium is allowed or allowable in such proceeding, (ii) any fees, indemnification obligations, expense reimbursement obligations or other liabilities payable under the documentation governing any Indebtedness, including, without limitation, fees, costs and other charges accruing or incurred after the filing of a petition initiating any proceeding under the Bankruptcy Laws irrespective of whether a claim for such fees, costs and other charges is allowed or allowable in such proceeding, (iii) any obligation to provide cash collateral in respect of letters of credit or any other Indebtedness, (iv) any Swap Obligations or (v) any Cash Management Obligations.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Preferred Stock" means, as applied to the Equity Interests of a Person, Equity Interests of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over the Equity Interests of any other class of such Person.

"Recovery" has the meaning specified in Section 6.06.

"Refinance" means, in respect of any Indebtedness, to refinance, replace or repay, or to issue other Indebtedness, in exchange or replacement for, such indebtedness. "Refinanced" and "Refinancing" shall have correlative meanings.

"Required First Lien Lenders" means the Required Lenders as specified in the First Lien Credit Agreement.

"Required Lenders" means the Required First Lien Lenders or the Required Second Lien Lenders, as applicable.

"Required Second Lien Lenders" means the Required Lenders as specified in the Second Lien Credit Agreement.

"Sale/Leaseback Transaction" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to Holdings or any of its Subsidiaries of any property, whether owned by Holdings or any of its Subsidiaries as of the Closing Date or later acquired, which has been or is to be sold or transferred by Holdings or any of its Subsidiaries to such Person or to any other Person from whom funds have been, or are to be, advanced by such Person on the security of such property.

"Second Lien Administrative Agent" means Deutsche Bank Trust Company Americas, as Second Lien Administrative Agent and collateral agent for the Second Lien Lenders under the Second Lien Credit Agreement and the Second Lien Credit Documents, together with any successor Second Lien Administrative Agent thereunder and, if there is no acting Second Lien Administrative Agent under the Second Lien Credit Agreement and the Second Lien Credit Documents, the Required Second Lien Lenders.

"Second Lien Claimholder" means, at any relevant time, the holders of Second Lien Obligations at such time, including without limitation the Second Lien Credit Parties.

"Second Lien Collateral" means all of the assets and property of any Loan Party, whether real, personal or mixed, with respect to which a Lien is granted as security for any Second Lien Obligations.

"Second Lien Collateral Documents" means the Collateral Documents (as defined in the Second Lien Credit Agreement as amended from time to time in accordance herewith) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Second Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"Second Lien Credit Agreement" means (i) the Initial Second Lien Credit Agreement and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein) or Refinance in whole or in part the indebtedness and other obligations outstanding under the Initial Second

Lien Credit Agreement or other agreement or instrument referred to in this clause (ii), subject to the limitations set forth herein and only to the extent permitted hereby. Any reference to the Second Lien Credit Agreement hereunder shall be deemed a reference to any Second Lien Credit Agreement then in existence.

"Second Lien Credit Documents" means the Second Lien Credit Agreement and the Loan Documents (as defined in the Second Lien Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Second Lien Credit Obligation, and any other document or instrument executed or delivered at any time in connection with any Second Lien Credit Obligations, including any intercreditor, accession or joinder agreement among holders of Second Lien Credit Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement.

"Second Lien Credit Party" means each Second Lien Lender, the Second Lien Administrative Agent, the Second Lien Syndication Agent and each Indemnitee (as defined in the Second Lien Credit Agreement) in respect of Second Lien Loans and their respective successors and assigns, and "Second Lien Credit Parties" means any two or more of them, collectively.

"Second Lien Enforcement Date" the date which is 180 days after the occurrence of (i) an Event of Default (under and as defined in the Second Lien Credit Agreement) and (ii) the First Lien Collateral Agent's receipt of written notice from the Second Lien Collateral Agent certifying that (x) an Event of Default (under and as defined in the Second Lien Credit Agreement) has occurred and is continuing and (y) (A) the Second Lien Obligations are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the terms of the Second Lien Credit Agreement or (B) the Second Lien Collateral Agent intends to accelerate the Second Lien Obligations in accordance with the terms of the Second Lien Credit Agreement; provided that the Second Lien Enforcement Date shall be stayed and shall not occur and shall be deemed not to have occurred (1) at any time the First Lien Collateral Agent or the First Lien Claimholders have commenced and are diligently pursuing any enforcement action with respect to a material portion of the Collateral, (2) at any time any Loan Party is then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding or (3) if the acceleration of the Second Lien Obligations (if any) is rescinded in accordance with the terms of the Second Lien Credit Agreement.

"Second Lien Lenders" means the "Lenders" under and as defined in the Second Lien Credit Agreement, and their respective successors and assigns.

"Second Lien Obligations" means all Obligations outstanding under the Second Lien Credit Agreement and the other Second Lien Credit Documents, including, with respect to each Loan Party, without duplication:

(i) in the case of the Borrower, all principal of and interest (including, without limitation, any interest which accrues after the any Insolvency or Liquidation Proceeding with respect to the Borrower, whether or not allowed or allowable as a claim in any such proceeding) on any Second Lien Loan under, or any Second Lien Note issued pursuant to, the Second Lien Credit Agreement or any other Second Lien Loan Document;

(ii) all fees, expenses, prepayment premiums, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party in respect of any Second Lien Loan pursuant to the Second Lien Credit Agreement or any other Second Lien Loan Document;

(iii) all expenses of the Second Lien Administrative Agent as to which the Second Lien Administrative Agent has a right to reimbursement by such Loan Party under Section 10.04 of the Second Lien Credit Agreement or under any other similar provision of any other Second Lien Loan Document, including, without limitation, any and all sums advanced by the Second Lien Administrative Agent to preserve the Collateral or preserve its security interests in the Collateral to the extent permitted under any Second Lien Loan Document or applicable law;

(iv) all amounts paid by any Indemnitee (as defined in the Second Lien Credit Agreement) as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04 of the Second Lien Credit Agreement or under any other similar provision of any other Second Lien Loan Document; and

(v) in the case of Holdings and each Subsidiary Guarantor, all amounts now or hereafter payable by Holdings or such Subsidiary Guarantor and all other obligations or liabilities now existing or hereafter arising or incurred on the part of Holdings or such Subsidiary Guarantor under or in respect of the Second Lien Loans pursuant to the Second Lien Credit Agreement or any other Second Lien Loan Document;

together in each case with all renewals, modifications, consolidations or extensions thereof. "Second Lien Obligations" shall include (i) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant Second Lien Credit Document and (ii) all fees, costs and charges incurred in connection with the Second Lien Credit Documents and provided for thereunder, in each case whether before or after commencement of an Insolvency or Liquidation Proceeding irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

"Sponsor" means GTCR Golder Rauner LLC, and its successors, GTCR Capital Partners, L.P., GTCR Partners II, L.P., GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., GTCR Co-Invest II, LLC and GTCR Golder Rauner II, LLC, together with each of their respective Sponsor Approved Funds.

"Sponsor Approved Funds" means, with respect to any Person, any Fund that is administered or managed by (i) such Person, (ii) an Affiliate of such Person or (iii) an entity that administers or manages such Person.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Notwithstanding the foregoing (except for the definition of Unrestricted Subsidiary contained herein), an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its Subsidiaries for purposes of this Agreement.

"Swap Agreement" means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options,

forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Creditor" means any First Lien Lender or any Affiliate of any First Lien Lender from time to time party to one or more Swap Agreements permitted under the First Lien Credit Agreement with a Loan Party (even if any such First Lien Lender for any reason ceases after the execution of such agreement to be a First Lien Lender thereunder), and its successors and assigns, and "Swap Creditors" means any two or more of them, collectively.

"Swap Obligations" of any Person means all obligations of such Person in respect of any Swap Agreement, excluding any amounts which such Person is entitled to set-off against its obligations under applicable Law.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (i) a so-called synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

"Uniform Commercial Code" or "UCC" mean the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in any applicable jurisdiction.

"Unrestricted Subsidiary" means any Subsidiary of the Borrower properly designated as an Unrestricted Subsidiary pursuant to Section 6.14 of the First Lien Credit Agreement.

"Voting Securities" means Equity Interests of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons of such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency).

**Section 1.02 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified or supplemented, (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement and (v) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.



## ARTICLE II LIEN PRIORITIES

**Section 2.01    Relative Priorities.** Notwithstanding the date, manner or order of grant, attachment or perfection of any Liens securing the Second Lien Obligations granted on the Collateral or of any Liens securing the First Lien Obligations granted on the Collateral and notwithstanding any provision of the UCC, or any applicable law or the Second Lien Credit Documents, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby agrees that: (i) any Lien on the Collateral securing any First Lien Obligations now or hereafter held by or on behalf of the First Lien Collateral Agent or any First Lien Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any of the Second Lien Obligations; and (ii) any Lien on the Collateral now or hereafter held by or on behalf of the Second Lien Collateral Agent, any Second Lien Claimholders or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any First Lien Obligations.

**Section 2.02    Failure to Perfect.** All Liens on the Collateral securing any First Lien Obligations shall be and remain senior in all respects and prior to all Liens on the Collateral securing any Second Lien Obligations for all purposes, notwithstanding any failure of the First Lien Collateral Agent or the First Lien Claimholders adequately to perfect its security interests in the Collateral, the subordination of any Lien on the Collateral securing any First Lien Obligations to any Lien securing any other obligation of any Loan Party, or the avoidance, invalidation or lapse of any Lien on the Collateral securing any First Lien Obligations.

**Section 2.03    Nature of First Lien Obligations.** The Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, acknowledges that (i) a portion of the First Lien Obligations are revolving in nature, (ii) the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, (iii) the terms of the First Lien Obligations may be modified, extended or amended from time to time and (iv) subject to the limitations on the aggregate principal amount of First Lien Obligations set forth in the definition of "First Lien Obligations" or in Section 5.03, the aggregate amount of the First Lien Obligations may be increased or Refinanced, in either event, without notice to or consent by the Second Lien Claimholders and without affecting the provisions hereof. The lien priorities provided in Sections 2.01 and 2.02 shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or Refinancing of either the First Lien Obligations or the Second Lien Obligations, or any portion thereof.

**Section 2.04    Prohibition on Contesting Liens.** Each of the Second Lien Collateral Agent, for itself and on behalf of each Second Lien Claimholder, and the First Lien Collateral Agent, for itself and on behalf of each First Lien Claimholder, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity or enforceability of a Lien held by or on behalf of any of the First Lien Claimholders in the First Lien Collateral or by or on behalf of any of the Second Lien Claimholders in the Second Lien Collateral, as the case may be; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the First Lien Collateral Agent or any First Lien Claimholder to enforce this Agreement, including the priority of the Liens securing the First Lien Obligations as provided in Sections 2.01 and 3.01.

**Section 2.05 Certain Liens.**

(a) *Grant of Certain Liens in favor of Second Lien Claimholders.* So long as any Second Lien Obligations remain outstanding, and subject to Article VI hereof, (i) each Loan Party agrees that if it or any of its Subsidiaries grants a Lien on any of its assets in favor of the First Lien Collateral Agent or the First Lien Claimholders, then it or such Subsidiary will grant a Lien on such assets in favor of the Second Lien Collateral Agent or the Second Lien Claimholders and (ii) if the First Lien Collateral Agent or any First Lien Claimholder shall acquire any Lien on any assets of any Loan Party or any of their respective Subsidiaries securing any First Lien Obligations which assets are not also subject to the Lien of the Second Lien Collateral Agent under the Second Lien Collateral Documents, then the First Lien Collateral Agent (or the relevant First Lien Claimholder), shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any other First Lien Document, hold and be deemed to have held such Lien and security interest for the benefit of the Second Lien Collateral Agent as security for the Second Lien Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover under Article IV.

(b) *Limitation on other Collateral for Second Lien Claimholders.* Until the date upon which the Discharge of First Lien Obligations shall have occurred, (i) the Second Lien Collateral Agent agrees that, after the date hereof, neither the Second Lien Collateral Agent nor any Second Lien Claimholder shall acquire or hold any Lien on any assets of Holdings, the Borrower, any Loan Party or any of their respective Subsidiaries securing any Second Lien Obligations which assets are not also subject to the Lien of the First Lien Collateral Agent under the First Lien Collateral Documents, and (ii) each Loan Party agrees not to grant any Lien on any of its assets, or permit any of its Subsidiaries to grant a Lien on any of its assets, in favor of the Second Lien Collateral Agent or the Second Lien Claimholders unless it, or such Subsidiary, has granted a similar Lien on such assets in favor of the First Lien Collateral Agent or the First Lien Claimholders. If the Second Lien Collateral Agent or any Second Lien Claimholder shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Loan Party or any of their respective Subsidiaries securing any Second Lien Obligations which assets are not also subject to the Lien of the First Lien Collateral Agent under the First Lien Collateral Documents, then the Second Lien Collateral Agent (or the relevant Second Lien Claimholder), shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any other Second Lien Document, (x) hold and be deemed to have held such Lien and security interest for the benefit of the First Lien Collateral Agent as security for the First Lien Obligations or (y) release such Lien.

**Section 2.06 Similar Liens and Agreements.** The parties hereto agree that it is their intention that the First Lien Collateral and the Second Lien Collateral be identical. In furtherance of the foregoing and of Section 8.09, the parties hereto agree, subject to the other provisions of this Agreement:

(i) upon request by the First Lien Collateral Agent or the Second Lien Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the First Lien Collateral and the Second Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the First Lien Credit Documents and the Second Lien Credit Documents; and

(ii) that the documents and agreements creating or evidencing the First Lien Collateral and the Second Lien Collateral and guarantees for the First Lien Obligations and the Second Lien Obligations shall be in all material respects the same forms of documents other than with respect to the senior and subordinate nature of the security interests in the Collateral securing the respective Obligations thereunder.

**ARTICLE III  
ENFORCEMENT**

**Section 3.01    Exercise of Remedies.**

(a)    So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against Holdings, the Borrower or any other Loan Party:

(i)    the Second Lien Collateral Agent and the Second Lien Claimholders:

(A)    from the date hereof until the occurrence of the Second Lien Enforcement Date, will not exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Collateral (including, without limitation, the exercise of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Second Lien Collateral Agent or any Second Lien Claimholder is a party) or institute or commence (or join with any other Person in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding (including, without limitation, any Insolvency or Liquidation Proceeding) with respect to any Lien held by it under the Second Lien Collateral Documents or any other Second Lien Credit Document or otherwise;

(B)    will not contest, protest or object (except for any objection that could be raised pursuant to Section 9-620 of the UCC or any successor statute) to any foreclosure proceeding or action brought by the First Lien Collateral Agent or any First Lien Claimholder or any other exercise by the First Lien Collateral Agent or any First Lien Claimholder, of any rights and remedies relating to the Collateral under the First Lien Credit Documents or otherwise, provided that the respective interests of the Second Lien Claimholders attach to the proceeds thereof, subject to the relative priorities described in Article II and Article IV; and

(C)    subject to the rights of the Second Lien Collateral Agent under clause (i)(A) above, object to the forbearance by the First Lien Collateral Agent or the First Lien Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral; and

(ii)    subject to Section 5.01, the First Lien Collateral Agent and the First Lien Claimholders shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or the consent of the Second Lien Collateral Agent or any Second Lien Claimholder; provided, that:

(A)    in any Insolvency or Liquidation Proceeding commenced by or against any Loan Party, the Second Lien Collateral Agent may file a claim or statement of interest with respect to the Second Lien Obligations;

(B)    the Second Lien Collateral Agent may take any action (not adverse to the Liens on the Collateral securing the First Lien Obligations, or the rights of any First Lien Collateral Agent or the First Lien Claimholders to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Lien on the Collateral;

(C) the Second Lien Claimholders shall be entitled to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Second Lien Claimholders, including without limitation any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;

(D) in any Insolvency or Liquidation Proceeding, the Second Lien Claimholders shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Loan Parties arising under either Bankruptcy Law or applicable non-bankruptcy law, in each case in accordance with the terms of this Agreement;

(E) in any Insolvency or Liquidation Proceeding, the Second Lien Claimholders shall be entitled to vote on any plan of reorganization, to the extent consistent with the provisions hereof; and

(F) the Second Lien Collateral Agent or any Second Lien Claimholder may exercise any of its rights or remedies with respect to the Collateral upon the occurrence and during the effective continuation of the Second Lien Enforcement Date.

In exercising rights and remedies with respect to the Collateral, the First Lien Collateral Agent and the First Lien Claimholders may enforce the provisions of the First Lien Credit Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by the First Lien Collateral Agent and the First Lien Claimholders to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) Except as expressly provided in Section 3.01(a), the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off or recoupment) with respect to any Collateral, and that any Collateral or proceeds taken or received by it will be paid over to the First Lien Collateral Agent pursuant to Section 4.02, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in Section 6.07. Without limiting the generality of the foregoing, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in Section 3.01(a)(ii), the sole right of the Second Lien Collateral Agent and the Second Lien Claimholders with respect to the Collateral is to hold a Lien on the Collateral pursuant to the Second Lien Collateral Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of First Lien Obligations has occurred in accordance with the terms of the Second Lien Credit Documents and applicable law.

(c) Subject to Section 3.01(a), the Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, agrees that (i) the Second Lien Collateral Agent and the Second Lien Claimholders will not take any action that would hinder, delay or impede any exercise of remedies under the First Lien Credit Documents, including any sale, lease, exchange, transfer or other disposition of the Collateral, whether by foreclosure or otherwise, and (ii) the Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, hereby waives any and all rights it or the Second Lien Claimholders may have as a junior lien creditor or otherwise to object (except for any objection that could be raised pursuant to Section 9-620 of the UCC or any successor statute) to the manner or order in which

the First Lien Collateral Agent or the First Lien Claimholders seek to enforce or collect the First Lien Obligations or the Liens granted in any of the First Lien Collateral.

(d) The Second Lien Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Second Lien Collateral Documents or any other Second Lien Credit Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the First Lien Collateral Agent or the First Lien Claimholders with respect to the Collateral as set forth in this Agreement and the First Lien Credit Documents.

### **Section 3.02    Actions Upon Breach.**

(a) If any Second Lien Claimholder, contrary to this Agreement, commences or participates in any action or proceeding against Holdings, the Borrower, any other Loan Party or the Collateral, the First Lien Collateral Agent may interpose in the name of the First Lien Claimholders or in the name of one or more Loan Parties the making of this Agreement as a defense or dilatory plea.

(b) Should any Second Lien Claimholder, contrary to this Agreement, in any way take, or attempt or threaten to take, any action with respect to the Collateral (including, without limitation, any attempt to realize upon or enforce any remedy with respect to this Agreement), or fail to take any action required by this Agreement, the First Lien Collateral Agent (in its own name or in the name of a Loan Party) may obtain relief against such Second Lien Claimholder by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Second Lien Collateral Agent on behalf of each Second Lien Claimholder that (i) the First Lien Claimholders' damages from such actions may be difficult to ascertain and may be irreparable, and (ii) the Second Lien Collateral Agent on behalf of each Second Lien Claimholder waives any defense that the First Lien Claimholders cannot demonstrate damage or be made whole by the awarding of damages.

## **ARTICLE IV PAYMENTS**

**Section 4.01    Application of Proceeds.** So long as the Discharge of First Lien Obligations has not occurred, any proceeds of Collateral received in connection with the sale or other disposition of such Collateral, or collection on such Collateral upon the exercise of remedies, shall be applied by the First Lien Collateral Agent to the payment of the First Lien Obligations in such order as is specified in the First Lien Credit Agreement. Upon the Discharge of the First Lien Obligations, the First Lien Collateral Agent shall deliver to the Second Lien Collateral Agent any proceeds of Collateral held by it in the same form as received, with any necessary endorsements or, as a court of competent jurisdiction may otherwise direct, to be applied by the Second Lien Collateral Agent to the Second Lien Obligations in such order as specified in the Second Lien Credit Documents.

**Section 4.02    Payment Turnover.** So long as the Discharge of First Lien Obligations has not occurred and except as specifically permitted by Section 4.03, any Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in the final sentence of Section 2.03) received by the Second Lien Collateral Agent or any Second Lien Claimholders in connection with the exercise of any right or remedy (including set-off or recoupment) in respect of the Collateral shall be segregated and held in trust and forthwith paid over to the First Lien Collateral Agent for the benefit of the First Lien Claimholders in the same form as received, with any necessary endorsements (but without recourse or warranty, express or implied) or as a court of competent jurisdiction may otherwise direct. The First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Second Lien Collateral Agent or any such Second Lien Claimholders. This authorization is coupled with

an interest and is irrevocable until the earlier of Discharge of First Lien Obligations and such time as this Agreement is terminated in accordance with its terms.

**Section 4.03 Permitted Mandatory Prepayments of Second Lien Obligations.**

Notwithstanding the foregoing provisions of this Article IV, mandatory prepayments required under Section 2.09 of the Second Lien Credit Agreement may be made and applied to the Second Lien Obligations (i) if (A) the payment to the Second Lien Claimholders is permitted by the First Lien Credit Agreement or (B) the corresponding mandatory prepayment of the First Lien Credit Documents is waived by the Required First Lien Lenders, or (ii) at all times following the Discharge of the First Lien Obligations.

**ARTICLE V  
OTHER AGREEMENTS**

**Section 5.01 Releases; Enforcement by the First Lien Collateral Agent.**

(a) If, in connection with:

(i) the exercise of any First Lien Collateral Agent's remedies in respect of the Collateral, including any sale, lease, exchange, transfer or other disposition of any such Collateral (an "Exercise of Remedies");

(ii) any sale, lease, exchange, transfer or other disposition of any Collateral permitted under the terms of the First Lien Credit Documents (whether or not an event of default thereunder, and as defined therein, has occurred and is continuing) (a "Disposition"), or

(iii) any release of Liens on the assets of any Loan Party, all of the Equity Interests of which is being released pursuant to any other provision of this Section 5.01(a);

the First Lien Collateral Agent, for itself or on behalf of any of the First Lien Claimholders, releases any of its Liens on any part of the Collateral, or releases any Loan Party from its obligations under its guaranty of the First Lien Obligations, in each case other than in connection with the Discharge of the First Lien Obligations, then the Liens, if any, of the Second Lien Collateral Agent, for itself or for the benefit of the Second Lien Claimholders, on such Collateral, and the obligations of such Loan Party under its guaranty of the Second Lien Obligations, shall be automatically, unconditionally and simultaneously released (the "Second Lien Release"), and the Second Lien Collateral Agent, for itself or on behalf of any such Second Lien Claimholders, promptly shall execute and deliver to the First Lien Collateral Agent or such Loan Party such termination statements, releases and other documents as the First Lien Collateral Agent or such Loan Party may request effectively to confirm such release; provided, however, that the Second Lien Release shall not occur without the consent of the Second Lien Collateral Agent (x) in the case of an Exercise of Remedies, as to any Collateral the net proceeds of the disposition of which will not be applied to repay (and, to the extent applicable, to reduce permanently commitments with respect to) the First Lien Obligations and (y) in the case of a Disposition, if the Disposition is prohibited by any provision of the Second Lien Credit Agreement.

(b) Until the Discharge of First Lien Obligations occurs, the Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, hereby irrevocably constitutes and appoints the First Lien Collateral Agent and any officer or agent of the First Lien Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Lien Collateral Agent or such holder or in the First Lien Collateral Agent's own name, from time to time in the First Lien Collateral Agent's discretion, for the purpose of

carrying out the terms of this Section 5.01, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.01, including any endorsements or other instruments of transfer or release. This authorization is coupled with an interest and is irrevocable until the earlier of the Discharge of First Lien Obligations and such time as this Agreement is terminated in accordance with its terms.

(c) Until the Discharge of First Lien Obligations occurs, to the extent that the First Lien Collateral Agent for itself and on behalf of the First Lien Claimholders (i) has released any Lien on Collateral or any Loan Party from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtains any new Liens or additional guaranties from one or more Loan Parties, then the Second Lien Collateral Agent for itself and on behalf of the Second Lien Claimholders shall be granted a Lien on any such Collateral and an additional guaranty, as the case may be, subject to the priorities set forth in Article II.

**Section 5.02 Insurance.** The First Lien Collateral Agent and the Second Lien Collateral Agent shall be named as additional insureds and as loss payees under any insurance policies maintained from time to time by any Loan Party. Until the date upon which the Discharge of First Lien Obligations shall have occurred, as between the First Lien Collateral Agent and the First Lien Claimholders, on the one hand, and the Second Lien Collateral Agent and the Second Lien Claimholders on the other, the First Lien Collateral Agent and the First Lien Claimholders shall have the sole and exclusive right (i) to adjust or settle any insurance policy or claim covering any Collateral in the event of any loss thereunder and (ii) to approve any award granted in any condemnation or similar proceeding affecting any Collateral. Until the date upon which the Discharge of First Lien Obligations shall have occurred, all proceeds of any such policy and any such award in respect of any Collateral that are payable to the First Lien Collateral Agent and the Second Lien Collateral Agent shall be paid to the First Lien Collateral Agent for the benefit of the First Lien Claimholders to the extent required under the First Lien Credit Documents and thereafter to the Second Lien Collateral Agent for the benefit of the Second Lien Claimholders to the extent required under the applicable Second Lien Credit Documents and then to the owner of the subject property or as a court of competent jurisdiction may otherwise direct. If the Second Lien Collateral Agent or any Second Lien Claimholder shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the First Lien Collateral Agent in accordance with the terms of Section 4.02.

**Section 5.03 Amendments to First Lien Credit Documents and Second Lien Credit Documents.**

(a) The First Lien Credit Documents may be amended, supplemented or otherwise modified in accordance with their terms and the First Lien Credit Agreement may be Refinanced in each case, without the consent of the Second Lien Collateral Agent or the Second Lien Claimholders; provided, however, that the holders of such Refinancing debt bind themselves in writing to the terms of this Agreement and any such amendment, supplement, modification or Refinancing shall not: (i) provide for a principal amount of, without duplication, term loans, revolving loan commitments, letters of credit, bonds, debentures, notes or similar instruments (but excluding Swap Obligations and Cash Management Obligations) in excess of the Maximum First Lien Indebtedness in the aggregate; (ii) increase the "Applicable Margin" or similar component of the interest rate or yield provisions applicable to the First Lien Credit Obligations by more than 2.00% (excluding increases (A) resulting from application of the pricing grid set forth in the First Lien Credit Agreement as in effect on the date hereof or (B) resulting from the accrual of interest at a default rate); or (iii) increase (or have the effect of increasing) the amount of, or the type of, dispositions of Collateral, the proceeds of which are not required to be used to prepay the First Lien Credit Obligations and which may be retained by the Loan Parties for use as working capital to an amount greater than that permitted under the Second Lien Credit Agreement.

(b) Until the Discharge of First Lien Obligations occurs, the Second Lien Credit Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Second Lien Credit Agreement may be Refinanced in each case, without the consent of the First Lien Collateral Agent or the First Lien Claimholders provided, however, that the holders of such Refinancing debt bind themselves in writing to the terms of this Agreement and any such amendment, supplement, modification or Refinancing shall not: (i) increase the maximum principal amount of the Second Lien Obligations or the rate of interest on any of the Second Lien Obligations, other than (A) to the extent of any increase in the "Applicable Margin" or similar component of the interest rate or yield provisions applicable to the First Lien Credit Obligations or (B) in connection with the imposition of a default rate of interest in accordance with the Second Lien Credit Documents as in effect on the date hereof, (ii) change the dates upon which payments of principal or interest on the Second Lien Obligations are due; provided, however that the Maturity Date (as defined in the Second Lien Credit Agreement) may be extended; (iii) change or add any event of default or any covenant with respect to the Second Lien Obligations; (iv) change any prepayment provisions of the Second Lien Obligations; or (v) change or amend any other term of the Second Lien Credit Documents if such change or amendment would result in a default under the First Lien Credit Agreement, increase the obligations of any Loan Party or confer additional material rights on any Second Lien Claimholder in a manner adverse in any material respect to any Loan Party or any of the First Lien Claimholders.

(c) Notwithstanding the foregoing clauses (a) and (b) of this Section 5.03, until the date upon which the Discharge of First Lien Obligations shall have occurred, without the prior written consent of the First Lien Collateral Agent, no Second Lien Collateral Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Second Lien Credit Agreement or Second Lien Collateral Document, would contravene any of the terms of this Agreement.

(d) The Second Lien Collateral Agent agrees that each Second Lien Collateral Document shall include the following language:

"Notwithstanding anything herein to the contrary, the lien and security interest granted to the collateral agent pursuant to this Agreement and the exercise of any right or remedy by the collateral agent hereunder are subject to the provisions of the Intercreditor Agreement dated as of May 3, 2007, as the same may be amended, supplemented, modified or replaced from time to time (the "Intercreditor Agreement"), among Bank of America, N.A., as First Lien Collateral Agent, Deutsche Bank Trust Company Americas, as Second Lien Collateral Agent, Bank of America, N.A., as Control Agent, Graceway Holdings, LLC and Graceway Pharmaceuticals, LLC. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern."

In addition, the Second Lien Collateral Agent agrees that each Second Lien Collateral Document under which any Lien on real property owned by any Loan Party is granted to secure the Second Lien Obligations covering any Collateral shall contain such other language as the First Lien Collateral Agent may reasonably request to reflect the priority of the First Lien Collateral Document covering such Collateral over such Second Lien Collateral Document.

(e) Notwithstanding the foregoing clauses (a) and (b) of this Section 5.3, until the date upon which the Discharge of First Lien Obligations shall have occurred, in the event the First Lien Collateral Agent or one or more of the First Lien Claimholders enter into any amendment, waiver or consent in respect of any of the First Lien Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of any First Lien Collateral



Document or changing in any manner the rights of the First Lien Collateral Agent, the First Lien Claimholders or the Loan Parties thereunder, then such amendment, waiver or consent shall automatically apply in a comparable manner to any comparable provision of the Second Lien Collateral Documents without the consent of the Second Lien Collateral Agent or the Second Lien Claimholders and without any action by the Second Lien Collateral Agent or any Loan Party; provided, however, (A) that no such amendment, waiver or consent shall be effective to (i) release any Lien of the Second Lien Collateral Documents, (ii) remove assets subject to the Lien of the Second Lien Collateral Documents, (iii) adversely affect the perfection or priority of any such Lien, (iv) reduce the principal of, or interest or other amounts payable on, any amount payable under the Second Lien Credit Agreement or any Second Lien Credit Document, (v) postpone any date fixed for any payment of principal of, or interest or other amounts payable on, any amounts payable under the Second Lien Credit Agreement or any Second Lien Credit Document, (vi) permit any Liens on the Collateral not permitted under the Second Lien Credit Documents or Article VI or (vii) impose duties on the Second Lien Collateral Agent without its consent, except, in the cases of clauses (i), (ii) and (iii), to the extent that a release of, or adverse effect on the perfection or priority of, such Lien is permitted by Section 5.01 or Article VI, and (B) notice of such amendment, waiver or consent shall have been given to the Second Lien Collateral Agent no later than 10 days after its effectiveness, provided that the failure to give such notice shall not affect the effectiveness or validity thereof, and provided further that this paragraph is intended solely to set forth provisions by which the Second Lien Collateral Documents shall be automatically affected by amendments, waivers and consents given by the First Lien Collateral Agent and First Lien Claimholders under the First Lien Credit Agreement and the First Lien Collateral Documents and is not intended to impose any liability on the First Lien Collateral Agent or First Lien Claimholders.

**Section 5.04 Rights as Unsecured Creditors.** Except as otherwise set forth in Section 2.01 or Section 3.01, the Second Lien Collateral Agent and the Second Lien Claimholders may exercise rights and remedies as unsecured creditors against any Loan Party in accordance with the terms of the Second Lien Credit Documents and applicable law. Except as otherwise set forth in Section 2.01 and Article IV nothing in this Agreement shall prohibit the receipt by the Second Lien Collateral Agent or any Second Lien Claimholders of the required payments of interest and principal so long as such receipt is not the direct or indirect result of the exercise by the Second Lien Collateral Agent or any Second Lien Claimholders of rights or remedies as a secured creditor (including set-off or recoupment) or enforcement of any Lien held by any of them. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the First Lien Collateral Agent or the First Lien Claimholders may have with respect to the Collateral. In the event that any Second Lien Claimholder becomes a judgment Lien creditor as a result of its enforcement of its rights as an unsecured creditor, such judgment Lien shall be subject to the terms of this Agreement for all purposes to the same extent as all other Liens securing the Second Lien Obligations subject to this Agreement.

**Section 5.05 Control Agent for Perfection.**

(a) *Appointment of Control Agent.* The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, each hereby appoint Bank of America, N.A., as its collateral agent (in such capacity, together with any successor in such capacity appointed by the First Lien Collateral Agent and the Second Lien Collateral Agent, the "Control Agent") for the limited purpose of acting as the agent on behalf of the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) with respect to the Control Collateral for purposes of perfecting the Liens of such parties on the Control Collateral. The Control Agent accepts such appointment and agrees to hold the Control Collateral in its possession or control (or in the possession or control of its agents or bailees) as Control Agent for the benefit of the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien

Collateral Agent (on behalf of itself and the Second Lien Claimholders) and any permitted assignee of any thereof solely for the purpose of perfecting the security interest granted to such parties in such Control Collateral, subject to the terms and conditions of this Section 5.05. The First Lien Collateral Agent and the Second Lien Collateral Agent hereby acknowledge that the Control Agent will obtain "control" under the UCC over each Controlled Account as contemplated by the First Lien Collateral Documents and the Second Lien Collateral Documents for the benefit of both the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) pursuant to the control agreements relating to each respective Controlled Account. The First Lien Collateral Agent and the Second Lien Collateral Agent hereby also acknowledge and agree that the Control Agent will obtain any landlord lien waivers required by the First Lien Collateral Documents and the Second Lien Collateral Documents for the benefit of (i) the First Lien Collateral Agent for the benefit of the First Lien Claimholders and (ii) the Second Lien Collateral Agent for the benefit of Second Lien Claimholders.

(b) *Direction by First Lien Collateral Agent.* The Control Agent, the First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, each hereby agrees that the First Lien Collateral Agent shall have the sole and exclusive right and authority to give instructions to, and otherwise direct, the Control Agent in respect of the Control Collateral or any control agreement with respect to any Control Collateral until the earlier of (i) the date upon which the Discharge of First Lien Obligations shall have occurred and (ii) the Second Lien Enforcement Date and neither the Second Lien Collateral Agent nor any Second Lien Claimholder will impede, hinder, delay or interfere with the exercise of such rights by the First Lien Collateral Agent in any respect. The Loan Parties hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agent to the same extent and on the same terms that the Loan Parties are required to do so for the First Lien Collateral Agent in accordance with the First Lien Credit Agreement. The First Lien Claimholders and the Second Lien Claimholders hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agent to the same extent and on the same terms that the First Lien Claimholders are required to do so for the First Lien Collateral Agent in accordance with the First Lien Credit Agreement and the Second Lien Claimholders are required to do so for the Second Lien Collateral Agent in accordance with the Second Lien Credit Agreement.

(c) *Rights and Obligations of the Control Agent.* The provisions of Article IX of the First Lien Credit Agreement and Article IX of the Second Lien Credit Agreement shall inure to the benefit of the Control Agent in respect of this Agreement, the First Lien Collateral Documents and the Second Lien Collateral Documents and shall be binding upon all Loan Parties, all First Lien Claimholders and all Second Lien Claimholders and upon the parties hereto in such respect. In furtherance and not in derogation of the rights, privileges and immunities of the Control Agent therein set forth:

(i) The Control Agent is authorized to take all such actions as are provided to be taken by it as Control Agent hereunder, under any First Lien Collateral Document, under any Second Lien Collateral Document or as instructed by the First Lien Collateral Agent or the Second Lien Collateral Agent as provided herein, in each case together with all other actions reasonably incidental thereto. As to any matters not expressly provided for herein (including, without limitation, the timing and methods of realization upon the Collateral) or in one or more of the First Lien Collateral Documents or Second Lien Collateral Documents, the Control Agent shall act or refrain from acting in accordance with written instructions from the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable, or, in the absence of such instructions or provisions, in accordance with its reasonable discretion.

(ii) The Control Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of any Lien created under any First Lien Collateral Document or Second Lien Collateral Document in any of the Collateral, whether impaired by operation of Law or by reason of any action or omission to act on its part hereunder unless such action or omission constitutes gross negligence or willful misconduct. The Control Agent shall not have a duty to ascertain or inquire as to the performance or observance of any of the terms of this Agreement, any First Lien Collateral Document or any Second Lien Collateral Document by any Loan Party. This Agreement shall not subject the Control Agent to any obligation or liability except as expressly set forth herein. In particular, the Control Agent shall have no duty to investigate whether the obligations of any Loan Party to the First Lien Collateral Agent or the Second Lien Collateral Agent or any other First Lien Claimholder or Second Lien Claimholder are in default or whether the First Lien Collateral Agent or the Second Lien Collateral Agent is entitled under the First Lien Collateral Documents or the Second Lien Collateral Documents, as applicable, or otherwise to give any instructions or notice of exclusive control. The Control Agent is fully entitled to rely upon such instructions as it believes in good faith to have originated from the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable.

(iii) Except as set forth in clause (iv) below, the Control Agent shall have no obligation whatsoever to the First Lien Collateral Agent, the Second Lien Collateral Agent, any First Lien Claimholder or any Second Lien Claimholder including, without limitation, any obligation to assure that the Control Collateral is owned by any Loan Party or one of their respective Subsidiaries or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.05.

(iv) In acting on behalf of the First Lien Collateral Agent and the First Lien Claimholders and the Second Lien Collateral Agent and the Second Lien Claimholders, the duties or responsibilities of the Control Agent under this Section 5.05 shall be limited solely to:

(A) physically holding the Control Collateral delivered to the Control Agent by any Loan Party as agent for the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) for purposes of perfecting the Lien held by the First Lien Collateral Agent and the Second Lien Collateral Agent;

(B) delivering the Collateral referred to in clause (A) above as set forth in Section 5.05(g);

(C) entering into one or more control agreements in form and substance satisfactory to the First Lien Collateral Agent and the Second Lien Collateral Agent with respect to Control Collateral consisting of deposit accounts, securities accounts, uncertificated securities or letter-of-credit rights and exercising the rights of the secured party thereunder in accordance with the instructions of, and on behalf of, the First Lien Collateral Agent and/or the Second Lien Collateral Agent, as applicable;

(D) maintaining one or more Collateral Accounts as provided in (and as defined in) the First Lien Collateral Documents and the Second Lien Collateral Documents; and

(E) delivering any notices received by it with respect to any item of Control Collateral in its possession or control to each of the First Lien Collateral Agent and the Second Lien Collateral Agent.

(d) *Rights of Second Lien Collateral Agent Subordinate.* Prior to the Discharge of First Lien Obligations, the rights of the Second Lien Collateral Agent shall at all times be subject to the terms of this Agreement and to the First Lien Collateral Agent's rights under the First Lien Credit Documents.

(e) *First Lien Collateral Agent as Limited Bailee for Perfection.* The First Lien Collateral Agent agrees to hold any Collateral (including any Control Collateral) that may from time to time be in its possession or control (or in the possession or control of its agents or bailees other than the Control Agent) as bailee or as agent, as the case may be, for the benefit of the Second Lien Collateral Agent (and any assignee thereof) (on behalf of itself and the Second Lien Claimholders) solely for the purpose of perfecting the security interest granted to the Second Lien Collateral Agent under the Second Lien Collateral Documents, subject to the terms and conditions of this Agreement. For the avoidance of doubt, solely for purposes of perfecting the Lien in favor of the Second Lien Collateral Agent, the First Lien Collateral Agent agrees that it shall be the agent of the Second Lien Collateral Agent with respect to any Control Collateral included in the Collateral that are controlled or held by the First Lien Collateral Agent. Except as set forth in this clause (e), the First Lien Collateral Agent shall have no obligation whatsoever to the Second Lien Collateral Agent or any Second Lien Claimholder including, without limitation, any obligation to assure that any Collateral is genuine or is owned by any Loan Party or one of their respective Subsidiaries or to preserve rights or benefits of any Person. In acting as agent or bailee on behalf of the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders), the duties or responsibilities of the First Lien Collateral Agent under this Section 5.05(e) shall be limited solely to (i) physically holding (or causing its agent or bailee, as applicable, to hold) any Collateral (including any Control Collateral) that may from time to time be in its possession or control (or in the possession or control of its agents or bailees other than the Control Agent) as agent or bailee for the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) for purposes of perfecting the Lien held by the Second Lien Collateral Agent and (ii) delivering the Control Collateral referred to in clause (i) above as set forth in Section 5.05(g).

(f) *No Fiduciary Relationship.* Neither the Control Agent nor the First Lien Collateral Agent shall have by reason of the Second Lien Credit Documents or this Agreement or any other document a fiduciary relationship in respect of the Second Lien Collateral Agent or any Second Lien Claimholder.

(g) *Delivery to Second Lien Collateral Agent.* Upon the Discharge of First Lien Obligations (other than in connection with a Refinancing of the First Lien Obligations), each of the Control Agent and the First Lien Collateral Agent shall deliver the Control Collateral (and other Collateral, if any) held by it to the Second Lien Collateral Agent together with any necessary endorsements (or otherwise allow the Second Lien Collateral Agent to obtain control of such Collateral) or as a court of competent jurisdiction may otherwise direct, and the Second Lien Collateral Agent shall accept and succeed to the role of the Control Agent as the agent for perfection on the Control Collateral.

(h) *Resignation of Control Agent.* The Control Agent shall have an unfettered right to resign as Control Agent upon 30 days notice to the First Lien Collateral Agent and the Second Lien Collateral Agent. If upon the effective date of such resignation no successor to the Control Agent has been appointed by the First Lien Collateral Agent and the Second Lien Collateral Agent, the Control Agent shall deliver the Control Collateral held by it to the First Lien Collateral Agent together with any necessary endorsements (or otherwise allow the First Lien Collateral Agent to obtain control of such

Control Collateral) or as a court of competent jurisdiction may otherwise direct, and the First Lien Collateral Agent shall accept and succeed to the role of the Control Agent as the agent for perfection on the Control Collateral.

**Section 5.06 When Discharge of First Lien Obligations Deemed to Not Have Occurred.** If at any time after the Discharge of First Lien Obligations has occurred, Holdings and/or the Borrower thereafter enters into any Refinancing of any First Lien Credit Document evidencing a First Lien Obligation which Refinancing is permitted hereby and by the terms of the Second Lien Credit Documents, then such Discharge of First Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the date of such Refinancing as a result of the occurrence of such first Discharge of First Lien Obligations), and the obligations under such Refinancing First Lien Credit Document shall automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the First Lien Collateral Agent under such First Lien Credit Documents shall be a First Lien Collateral Agent for all purposes of this Agreement. Upon receipt of a notice stating that Holdings and/or the Borrower has entered into a new First Lien Credit Document (which notice shall include the identity of the new collateral agent, such agent, the "New Agent"), the Second Lien Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as Holdings, the Borrower or such New Agent shall reasonably request in order to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. If the new First Lien Obligations under the new First Lien Credit Documents are secured by assets of the Loan Parties of the type constituting Collateral that do not also secure the Second Lien Obligations, then the Second Lien Obligations shall be secured at such time by a second priority Lien on such assets to the same extent provided in the Second Lien Collateral Documents.

**Section 5.07 Purchase Right.** Without prejudice to the enforcement of the First Lien Claimholders' remedies, the First Lien Claimholders agree that at any time following (i) acceleration of the First Lien Obligations in accordance with the terms of the First Lien Credit Agreement, (ii) a payment default under the First Lien Credit Agreement that has not been cured (or waived by the First Lien Claimholders) within sixty days of the occurrence thereof or (iii) the commencement of an Insolvency or Liquidation Proceeding (each, a "Purchase Event"), one or more of the Second Lien Claimholders may request, and the First Lien Claimholders hereby offer the Second Lien Claimholders the option, to purchase all, but not less than all, of the aggregate amount of outstanding First Lien Obligations outstanding at the time of purchase at par plus any applicable premium without warranty or representation or recourse (except for representations and warranties required to be made by assigning lenders pursuant to the Assignment and Assumption (as such term is defined in the First Lien Credit Agreement)). If such right is exercised, the parties shall endeavor to close promptly thereafter but in any event within ten Business Days of the request. If one or more of the Second Lien Claimholders exercise such purchase right, it shall be exercised pursuant to documentation mutually acceptable to each of the First Lien Collateral Agent and the Second Lien Collateral Agent. If none of the Second Lien Claimholders exercise such right, the First Lien Claimholders shall have no further obligations pursuant to this Section 5.07 for such Purchase Event and may take any further actions in their sole discretion in accordance with the First Lien Credit Documents and this Agreement.

## ARTICLE VI INSOLVENCY OR LIQUIDATION PROCEEDINGS

**Section 6.01 Use of Cash Collateral and Financing Issues.** Until the Discharge of First Lien Obligations has occurred, if Holdings, the Borrower or any other Loan Party shall be subject to any Insolvency or Liquidation Proceeding and the First Lien Collateral Agent shall desire to permit the

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use of cash collateral on which the First Lien Collateral Agent or any other creditor has a Lien or to permit Holdings, the Borrower or any other Loan Party to obtain financing from one or more of the First Lien Claimholders under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (each, a "DIP Financing"), then, so long as the maximum amount of Indebtedness that may be outstanding from time to time in connection with such DIP Financing shall not exceed an amount equal to \$25,000,000, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, (A) agrees that it will raise no objection to such use of cash collateral or DIP Financing nor support any other Person objecting to such sale, use, or lease of cash collateral or DIP Financing and will not request any form of adequate protection or any other relief in connection therewith (except as agreed by the First Lien Collateral Agent or to the extent expressly permitted below or by Section 6.04) and, to the extent the Liens securing the First Lien Obligations are subordinated to or pari passu with such DIP Financing, the Second Lien Collateral Agent will subordinate its Liens in the Collateral to (x) the Liens securing such DIP Financing (and all Obligations relating thereto), (y) any adequate protection Liens provided to the First Lien Claimholders and (z) any "carve-out" for professional or United States Trustee fees agreed to by the First Lien Collateral Agent, and (B) agrees that notice received five Business Days prior to the entry of an order approving such usage of cash collateral or approving such DIP Financing shall be adequate notice; provided that the foregoing shall not prohibit the Second Lien Collateral Agent or the Second Lien Claimholders from objecting solely to any provisions in any DIP Financing relating to, describing or requiring any provision or content of a plan of reorganization other than any provisions requiring that the DIP Financing be paid in full in cash.

**Section 6.02 Sale Issues.** The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that it will raise no objection to or oppose a sale or other disposition of any Collateral (and any post petition assets subject to adequate protection liens in favor of the First Lien Collateral Agent) free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code if the Required Lenders under the First Lien Credit Agreement have consented to such sale or disposition of such assets so long as the interests of the Second Lien Claimholders in the Collateral (and any post petition assets subject to adequate protection liens, if any, in favor of the Second Lien Collateral Agent) attach to the proceeds thereof, subject to the terms of this Agreement. If requested by the First Lien Collateral Agent in connection therewith, the Second Lien Collateral Agent shall affirmatively consent to such a sale or disposition.

**Section 6.03 Relief from Automatic Stay.** Until the Discharge of First Lien Obligations has occurred, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that none of them shall (i) seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the First Lien Collateral Agent or (ii) oppose any request by the First Lien Collateral Agent or any First Lien Claimholder to seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral.

**Section 6.04 Adequate Protection.**

(a) The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that none of them shall contest (or support any other person contesting) (i) any request by the First Lien Collateral Agent or the First Lien Claimholders for adequate protection or (ii) any objection by the First Lien Collateral Agent or the First Lien Claimholders to any motion, relief, action or proceeding based on the First Lien Collateral Agent or the First Lien Claimholders claiming a lack of adequate protection. In any Insolvency or Liquidation Proceeding, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, may seek adequate protection in respect of the Second Lien Obligations, subject to the provisions of this Agreement, if (A) the First Lien Claimholders (or any subset thereof) are granted adequate protection in the form of additional collateral

including replacement liens on post-petition collateral and (B) such additional protection requested by the Second Lien Collateral Agent is in the form of a Lien on such additional collateral, which Lien, if granted, will be subordinated to the adequate protection Liens securing the First Lien Obligations and the Liens securing any DIP Financing (and all First Lien Obligations relating thereto) on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the Liens securing the First Lien Obligations under this Agreement and the Liens securing any such DIP Financing. In the event the Second Lien Collateral Agent, on behalf of itself or any of the Second Lien Claimholders, seeks or requests adequate protection in respect of Second Lien Obligations and such adequate protection is granted in the form of additional collateral, then the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that the First Lien Collateral Agent shall also be granted a Lien on such additional collateral as security for the First Lien Obligations and for any DIP Financing and that any Lien on such additional collateral securing the Second Lien Obligations shall be subordinated to the Liens on such collateral securing the First Lien Obligations and any DIP Financing (and all Obligations relating thereto) and to any other Liens granted to the First Lien Claimholders as adequate protection on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the Liens securing the First Lien Obligations under this Agreement and the Liens securing any DIP Financing.

(b) Similarly, if the First Lien Claimholders are granted adequate protection in the form of a superpriority claim, then the Second Lien Collateral Agent, on behalf of itself or any of the Second Lien Claimholders, may seek or request a superpriority claim, which superpriority claim will be junior in all respects to the superpriority claim granted to the First Lien Collateral Agent and the First Lien Claimholders, and, in the event that the Second Lien Collateral Agent, on behalf of itself or any of the Second Lien Claimholders, seeks or requests adequate protection in respect of Second Lien Obligations and such adequate protection is granted in the form of a superpriority claim, then the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that the First Lien Collateral Agent and the providers of any DIP Financing also shall be granted a superpriority claim, which superpriority claim will be senior in all respects to the superpriority claim granted to the Second Lien Collateral Agent and the Second Lien Claimholders.

(c) Notwithstanding the foregoing, if the First Lien Claimholders are deemed by a court of competent jurisdiction to be fully secured on the petition date of any Insolvency or Liquidation Proceeding, then the Second Lien Collateral Agent and the Second Lien Claimholders shall not be prohibited from seeking adequate protection in the form of payments in the amount of current postpetition interest, incurred fees and expenses or other cash payments.

**Section 6.05 No Waiver.** Nothing contained herein shall prohibit or in any way limit the First Lien Collateral Agent or any First Lien Claimholder from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by the Second Lien Collateral Agent or any of the Second Lien Claimholders, including the seeking by the Second Lien Collateral Agent or any Second Lien Claimholders of adequate protection or the asserting by the Second Lien Collateral Agent or any Second Lien Claimholders of any of its rights and remedies under the Second Lien Credit Documents or otherwise; provided, however, that this Section 6.05 shall not limit the rights of the Second Lien Claimholders under Section 3.01(a) or under Section 6.04 or Section 6.09.

**Section 6.06 Avoidance Issues.** If any First Lien Claimholder is required in any Insolvency or Liquidation Proceeding, or otherwise, to turn over or otherwise pay to the estate of Holdings, the Borrower or any other Loan Party any amount in respect of a First Lien Obligation (a "Recovery"), then such First Lien Claimholders shall be entitled to a reinstatement of First Lien Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties

hereto from such date of reinstatement. Collateral or proceeds thereof received by the Second Lien Collateral Agent or any Second Lien Claimholder after a Discharge of First Lien Obligations and prior to the reinstatement of such First Lien Obligations shall be delivered to the First Lien Collateral Agent upon such reinstatement in accordance with Section 4.02.

**Section 6.07 Separate Grants of Security and Separate Classification.** Each of the Loan Parties, the First Lien Claimholders and the Second Lien Claimholders acknowledges and agrees that (i) the grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Second Lien Obligations are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the First Lien Claimholders and Second Lien Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the First Lien Claimholders shall be entitled to receive, in addition to amounts distributed to them from, or in respect of, the Collateral in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs, premium and other charges, irrespective of whether a claim for such amounts is allowed or allowable in such Insolvency or Liquidation Proceeding, before any distribution from, or in respect of, any Collateral is made in respect of the claims held by the Second Lien Claimholders, with the Second Lien Claimholders hereby acknowledging and agreeing to turn over to the First Lien Claimholders amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Lien Claimholders.

**Section 6.08 Reorganization Securities.** If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, to the extent the debt obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

**Section 6.09 Post-Petition Claims.**

(a) Neither the Second Lien Collateral Agent nor any other Second Lien Claimholder shall oppose or seek to challenge any claim by the First Lien Collateral Agent or any First Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of First Lien Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the lien of the First Lien Collateral Agent held for the benefit of the First Lien Claimholders, without regard to the existence of the Lien of the Second Lien Collateral Agent on behalf of the Second Lien Claimholders on the Collateral.

(b) Neither the First Lien Collateral Agent nor any other First Lien Claimholder shall oppose or seek to challenge any claim by the Second Lien Collateral Agent or any Second Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the Lien of the Second Lien Collateral Agent on behalf of the Second Lien Claimholders on the Collateral (after taking into account the First Lien Obligations).



**Section 6.10 Waiver.** The Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, waives any claim it or they may hereafter have against the First Lien Collateral Agent or any First Lien Claimholder arising out of the election of the First Lien Collateral Agent or any First Lien Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code, or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency or Liquidation Proceeding.

**Section 6.11 Expense Claims.** Neither Second Lien Collateral Agent nor any Second Lien Claimholder will (i) contest the payment of fees, expenses or other amounts to the First Lien Collateral Agent or any First Lien Claimholder under Section 506(b) of the Bankruptcy Code or otherwise to the extent provided for in the First Lien Credit Agreement or (ii) assert or enforce, at any time prior to the Discharge of First Lien Obligations, any claim under Section 506(c) of the Bankruptcy Code senior to or on parity with the First Lien Obligations for costs or expenses of preserving or disposing of any Collateral.

**Section 6.12 Other Matters.** Except as otherwise provided herein, to the extent that the Second Lien Collateral Agent or any Second Lien Claimholder has or acquires rights under Section 361, Section 363 or Section 364 of the Bankruptcy Code with respect to any of the Collateral, the Second Lien Collateral Agent agrees, on behalf of itself and the Second Lien Claimholders, not to assert any of such rights without the prior written consent of the First Lien Collateral Agent; provided that if requested by the First Lien Collateral Agent, the Second Lien Collateral Agent shall timely exercise such rights in the manner requested by the First Lien Collateral Agent, including any rights to payments in respect of such rights.

**Section 6.13 Effectiveness in Insolvency or Liquidation Proceedings.** This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Loan Party shall include such Person as a debtor-in-possession and any receiver or trustee for such Person in any Insolvency or Liquidation Proceeding.

## **ARTICLE VII RELIANCE; WAIVERS; ETC.**

### **Section 7.01 Non-Reliance.**

(a) The consent by the First Lien Claimholders to the execution and delivery of the Second Lien Credit Documents and the grant to the Second Lien Collateral Agent on behalf of the Second Lien Claimholders of a Lien on the Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the First Lien Claimholders to the Loan Parties shall be deemed to have been given and made in reliance upon this Agreement. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, acknowledges that it and the Second Lien Claimholders have, independently and without reliance on the First Lien Collateral Agent or any First Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Second Lien Credit Agreement, the other Second Lien Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the Second Lien Credit Agreement, the other Second Lien Credit Documents or this Agreement.

(b) The consent by the Second Lien Claimholders to the execution and delivery of the First Lien Credit Documents and the grant to the First Lien Collateral Agent on behalf of the First

Lien Claimholders of a Lien on the Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Second Lien Claimholders to the Loan Parties shall be deemed to have been given and made in reliance upon this Agreement. The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, acknowledges that it and the First Lien Claimholders have, independently and without reliance on the Second Lien Collateral Agent or any Second Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the First Lien Credit Agreement, the other First Lien Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the First Lien Credit Agreement, the other First Lien Credit Documents or this Agreement.

**Section 7.02    No Warranties or Liability.** The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, acknowledges and agrees that each of the Second Lien Collateral Agent and the Second Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Second Lien Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Second Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Second Lien Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Obligations, acknowledges and agrees that the First Lien Collateral Agent and the First Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the First Lien Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The First Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under their respective First Lien Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Second Lien Collateral Agent and the Second Lien Claimholders shall have no duty to the First Lien Collateral Agent or any of the First Lien Claimholders, and the First Lien Collateral Agent and the First Lien Claimholders shall have no duty to the Second Lien Collateral Agent or any of the Second Lien Claimholders, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with Holdings, the Borrower or any other Loan Party (including the First Lien Credit Documents and the Second Lien Credit Documents), regardless of any knowledge thereof which they may have or be charged with.

**Section 7.03    No Waiver of Lien Priorities.**

(a) No right of the First Lien Claimholders, the Control Agent, the First Lien Collateral Agent or any of them to enforce any provision of this Agreement or any First Lien Credit Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of Holdings, the Borrower or any other Loan Party or by any act or failure to act by the Control Agent, any First Lien Claimholder or the First Lien Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the First Lien Credit Documents or any of the Second Lien Credit Documents, regardless of any knowledge thereof which the Control Agent, the First Lien Collateral Agent or the First Lien Claimholders, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of Holdings, the Borrower and the other Loan Parties under the First Lien Credit Documents and subject to the provisions of Section 5.03(a)), the First Lien Claimholders, the First Lien Collateral Agent and any of them may, at any time and from time to time in accordance with the First Lien Credit Documents or applicable law, without the consent of, or notice to, the Second Lien Collateral

Agent or any Second Lien Claimholders, without incurring any liabilities to the Second Lien Collateral Agent or any Second Lien Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Second Lien Collateral Agent or any Second Lien Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

(i) make loans and advances to any Loan Party or issue, guaranty or obtain letters of credit for account of any Loan Party or otherwise extend credit to any Loan Party, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing (subject, in each case, to the limits set forth in the definition of "First Lien Obligations" and Section 5.03);

(ii) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the First Lien Obligations or any Lien on any First Lien Collateral or guaranty thereof or any liability of Holdings, the Borrower or any other Loan Party, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the First Lien Obligations, without any restriction as to the amount, tenor or terms of any such increase or extension, subject to the limits set forth in the definition of "First Lien Obligations") or, subject to the provisions of this Agreement, otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the First Lien Collateral Agent or any of the First Lien Claimholders, the First Lien Obligations or any of the First Lien Credit Documents; provided, however, the foregoing shall not prohibit the Second Lien Collateral Agent and the Second Lien Claimholders from enforcing, consistent with the other terms of this Agreement, any right arising under the Second Lien Credit Agreement as a result of any Loan Party's violation of the terms thereof;

(iii) subject to the provisions of this Agreement, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Collateral or any liability of Holdings, the Borrower or any other Loan Party to the First Lien Claimholders or the First Lien Collateral Agent, or any liability incurred directly or indirectly in respect thereof;

(iv) settle or compromise any First Lien Obligation or any other liability of Holdings, the Borrower or any other Loan Party or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the First Lien Obligations) in any manner or order;

(v) exercise or delay in or refrain from exercising any right or remedy against Holdings, the Borrower or any security or any other Loan Party or any other Person, elect any remedy and otherwise deal freely with Holdings, the Borrower, any other Loan Party or any First Lien Collateral and any security and any guarantor or any liability of Holdings, the Borrower or any other Loan Party to the First Lien Claimholders or any liability incurred directly or indirectly in respect thereof;

(vi) take or fail to take any Lien securing the First Lien Obligations or any other collateral security for any First Lien Obligations or take or fail to take any action which may be necessary or appropriate to ensure that any Lien securing First Lien Obligations or any other Lien upon any property is duly enforceable or perfected or entitled to priority as against any other Lien or to ensure that any proceeds of any property subject to any Lien are applied to the payment of any First Lien Obligation or any obligation secured thereby; or

(vii) otherwise release, discharge or permit the lapse of any or all Liens securing the First Lien Obligations or any other Liens upon any property at any time securing any First Lien Obligations.

(c) The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, also agrees that the Control Agent, the First Lien Claimholders and the First Lien Collateral Agent shall have no liability to the Second Lien Collateral Agent or any Second Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby waives all claims against the Control Agent, any First Lien Claimholder or the First Lien Collateral Agent, arising out of any and all actions which the First Lien Claimholders or the First Lien Collateral Agent may take or permit or omit to take with respect to: (i) the First Lien Credit Documents, (ii) the collection of the First Lien Obligations or (iii) the foreclosure upon, or sale, liquidation or other disposition of, any Collateral (including, without limitation, the Control Collateral, as applicable). The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that the First Lien Claimholders and the First Lien Collateral Agent have no duty to them in respect of the maintenance or preservation of the Collateral, the First Lien Obligations or otherwise.

(d) The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

**Section 7.04 Obligations Unconditional.** All rights, interests, agreements and obligations of the First Lien Collateral Agent and the First Lien Claimholders and the Second Lien Collateral Agent and the Second Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of any First Lien Finance Documents or any Second Lien Credit Documents or any setting aside or avoidance of any Lien;

(ii) except as otherwise set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the First Lien Obligations or Second Lien Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any First Lien Finance Document or any Second Lien Credit Document;

(iii) any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Lien Obligations or Second Lien Obligations or any guarantee thereof;

(iv) the commencement of any Insolvency or Liquidation Proceeding in respect of Holdings, the Borrower or any other Loan Party; or

(v) any other circumstances which otherwise might constitute a defense available to, or a discharge of, Holdings, the Borrower or any other Loan Party in respect of the First Lien Obligations, or of the Second Lien Collateral Agent or any Second Lien Claimholder in respect of this Agreement.

**Section 7.05    Certain Notes.**

(a)     Promptly upon the satisfaction of the conditions set forth in clauses (a), (b), (c) and (d) of the definition of Discharge of First Lien Obligations, the First Lien Collateral Agent shall deliver written notice confirming same to the Second Lien Collateral Agent; provided that the failure to give any such notice shall not result in any liability of the First Lien Collateral Agent or the First Lien Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

(b)     Promptly upon (or as soon as practicable following) the commencement by the First Lien Collateral Agent of any enforcement action or the exercise of any remedy with respect to any Collateral (including by way of a public or private sale of Collateral), the First Lien Collateral Agent shall notify the Second Lien Collateral Agent of such action; provided that the failure to give any such notice shall not result in any liability of the First Lien Collateral Agent or the First Lien Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.01    Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of the First Lien Credit Documents or the Second Lien Credit Documents, the provisions of this Agreement shall govern and control. The parties hereto acknowledge that the terms of this Agreement are not intended to negate any specific rights granted to Holdings, the Borrower and the other Loan Parties in the First Lien Credit Documents and the Second Lien Credit Documents.

**Section 8.02    Effectiveness; Continuing Nature of this Agreement; Severability.** This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the First Lien Claimholders may continue, at any time and without notice to the Second Lien Collateral Agent or any Second Lien Claimholder subject to the Second Lien Credit Documents, to extend credit and other financial accommodations and lend monies to or for the benefit of Holdings, the Borrower or any other Loan Party constituting First Lien Obligations in reliance hereof. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to Holdings, the Borrower or any other Loan Party shall include Holdings, the Borrower or such Loan Party as debtor and debtor-in-possession and any receiver or trustee for Holdings, the Borrower or any other Loan Party (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect, (i) with respect to the Second Lien Collateral Agent, the Second Lien Claimholders and the Second Lien Obligations, upon the later of (x) the date upon which the obligations under the Second Lien Credit Agreement terminate and payment has been made in full in cash of all other Second Lien Obligations outstanding on such date and (y) if there are other Second Lien Obligations outstanding on such date, the date upon which such Second Lien Obligations terminate and (ii) with respect to the First Lien Collateral Agent, the First Lien Claimholders and the First Lien Obligations, the date of Discharge of First Lien Obligations, subject to the rights of the First Lien Claimholders under Section 5.06 and Section 6.06.

**Section 8.03    Amendments; Waivers.** No amendment, modification or waiver of any of the provisions of this Agreement by the Second Lien Collateral Agent or the First Lien Collateral

Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, no Loan Party shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights or obligations are directly affected.

**Section 8.04    Information Concerning Financial Condition of Holdings and its Subsidiaries.**

(a)     The First Lien Collateral Agent and the First Lien Claimholders, on the one hand, and the Second Lien Claimholders and the Second Lien Collateral Agent, on the other hand, shall each be responsible for keeping themselves informed of (i) the financial condition of Holdings and its Subsidiaries and all endorsers and/or guarantors of the First Lien Obligations or the Second Lien Obligations and (ii) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations. The First Lien Collateral Agent and the First Lien Claimholders shall have no duty to advise the Second Lien Collateral Agent or any Second Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the First Lien Collateral Agent or any of the First Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Second Lien Collateral Agent or any Second Lien Claimholder, it or they shall be under no obligation (i) to make, and the First Lien Collateral Agent and the First Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) to provide any additional information or to provide any such information on any subsequent occasion, (iii) to undertake any investigation or (iv) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential. Similarly, the Second Lien Collateral Agent and the Second Lien Claimholders shall have no duty to advise the First Lien Collateral Agent or any First Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the Second Lien Collateral Agent or any of the Second Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the First Lien Collateral Agent or any First Lien Claimholder, it or they shall be under no obligation (i) to make, and the Second Lien Collateral Agent and the Second Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) to provide any additional information or to provide any such information on any subsequent occasion, (iii) to undertake any investigation or (iv) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

(b)     The Loan Parties agree that any information provided to the First Lien Collateral Agent, the Second Lien Collateral Agent, the Control Agent, any First Lien Claimholder or any Second Lien Claimholder may be shared by such Person with any First Lien Claimholder, any Second Lien Claimholder, the Control Agent, the First Lien Collateral Agent or the Second Lien Collateral Agent notwithstanding any request or demand by such Loan Party that such information be kept confidential; provided, that such information shall otherwise be subject to the respective confidentiality provisions in the First Lien Credit Agreement and the Second Lien Credit Agreement, as applicable.

**Section 8.05    Subrogation.** The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby waives any rights of subrogation it may acquire as a result of any

payment hereunder until the Discharge of First Lien Obligations has occurred. Each of the Loan Parties acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the Second Lien Collateral Agent or any Second Lien Claimholder that are paid over to the First Lien Collateral Agent or any First Lien Claimholder pursuant to this Agreement shall not reduce any of the Second Lien Obligations but shall instead, to the extent applied to repay the First Lien Obligations, be deemed to be a payment by the Loan Parties on account of the First Lien Obligations.

**Section 8.06 Application of Payments.** All payments received by the First Lien Collateral Agent or the First Lien Claimholders may be applied, reversed and reapplied, in whole or in part, to such part of the First Lien Obligations provided for in the First Lien Credit Documents. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, assents to any extension or postponement of the time of payment of the First Lien Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security which may at any time secure any part of the First Lien Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

**Section 8.07 Submission to Jurisdiction; Waiver of Jury Trial.**

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK TO THE EXTENT PERMITTED BY APPLICABLE LAW. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW (i) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NON EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (ii) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 8.08; AND (iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

(b) EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 8.07(b) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS

OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**Section 8.08 Notices.** All notices to the Control Agent, the Second Lien Claimholders and the First Lien Claimholders permitted or required under this Agreement shall also be sent to the Second Lien Collateral Agent and the First Lien Collateral Agent, respectively. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail or four Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

**Section 8.09 Further Assurances.** The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders under the First Lien Credit Documents, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders under the Second Lien Credit Documents, and each of Holdings and the Borrower (on its own behalf and on behalf of all other Loan Parties), agrees that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the First Lien Collateral Agent or the Second Lien Collateral Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

**Section 8.10 Applicable Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

**Section 8.11 Binding on Successors and Assigns.** This Agreement shall be binding upon the First Lien Collateral Agent, the First Lien Claimholders, the Second Lien Collateral Agent, the Second Lien Claimholders, the Control Agent and their respective successors and assigns.

**Section 8.12 Specific Performance.** Each of the First Lien Collateral Agent and the Second Lien Collateral Agent may demand specific performance of this Agreement. The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders under its First Lien Credit Documents, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any First Lien Collateral Agent or the Second Lien Collateral Agent, as the case may be.

**Section 8.13 Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**Section 8.14 Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.



**Section 8.15 Authorization.** By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

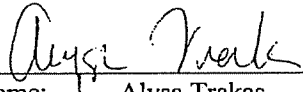
**Section 8.16 No Third Party Beneficiaries.** This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the First Lien Collateral Agent, the First Lien Claimholders, the Second Lien Collateral Agent, the Second Lien Claimholders and the Control Agent. No other Person shall have or be entitled to assert rights or benefits hereunder.

**Section 8.17 Provisions Solely to Define Relative Rights.** The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Lien Claimholders on the one hand and the Second Lien Claimholders on the other hand. Nothing in this Agreement is intended to or shall impair the rights of Holdings, the Borrower or any other Loan Party, or the obligations of Holdings, the Borrower or any other Loan Party, which are absolute and unconditional, to pay the First Lien Obligations and the Second Lien Obligations as and when the same shall become due and payable in accordance with their terms.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BANK OF AMERICA, N.A.,  
as First Lien Collateral Agent

By:   
Name: Alysa Trakas  
Title: Vice President

Notice Address:

Principal Office:  
Bank of America, N.A.  
Agency Management  
Mail Code: NC1-001-15-14  
101 N. Tryon Street  
Charlotte, NC 28255-0001  
Attention: Mollie Canup  
Telephone: 704-387-5449  
Telecopier: 704-409-0011

with a copy to:

Bank of America, N.A.  
Portfolio Management  
Mail Code: NC1-001-17-15  
101 N. Tryon Street  
Charlotte, NC 28255-0001  
Attention: Alysa Trakas  
Telephone: 704-387-2640  
Telecopier: 704-409-0936

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Second Lien Collateral Agent

By: Carin Keegan  
Name: Carin Keegan  
Title: Vice President

By: Susan LeFevre  
Name:  
Title: Susan LeFevre  
Director

Notice Address:

Principal Office:

60 Wall Street, M.S. NYC60-0208  
New York, New York 10005  
Attention: Carin Keegan  
Telephone: (212) 250-6083  
Telecopier: (212)-797-5690

BANK OF AMERICA, N.A.,  
as Control Agent

By: Alysa Trakas  
Name: Alysa Trakas  
Title: Vice President

Notice Address:

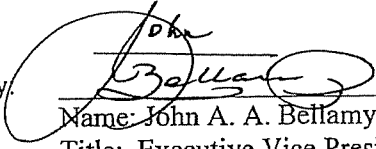
Principal Office:

Bank of America, N.A.  
Agency Management  
Mail Code: NC1-001-15-14  
101 N. Tryon Street  
Charlotte, NC 28255-0001  
Attention: Mollie Canup  
Telephone: 704-387-5449  
Telecopier: 704-409-0011

with a copy to:

Bank of America, N.A.  
Portfolio Management  
Mail Code: NC1-001-17-15  
101 N. Tryon Street  
Charlotte, NC 28255-0001  
Attention: Alysa Trakas  
Telephone: 704-387-2640  
Telecopier: 704-409-0936

GRACEWAY HOLDINGS, LLC,  
as Holdings

By:   
Name: John A. A. Bellamy  
Title: Executive Vice President

Notice Address:  
Principal Office:  
340 Edgemont Avenue  
Suite 500  
Bristol, TN 37620  
Attention: Jefferson J. Gregory, CEO  
Telephone: (423) 274-2101  
Facsimile: (425) 279-2199

with a copy to:

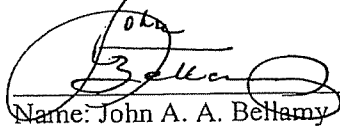
GTCR Golder Rauner, LLC  
6100 Sears Tower  
Chicago, IL 60606-6402  
Attention: Edgar D. Janotta, Jr.  
Constantine S. Mihas  
Telephone: (312) 382-2200  
Facsimile: (312) 382-2201

and

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Attention: Christopher Butler  
Jeffrey A. Fine  
Telephone: (312) 861-2000  
Facsimile: (312) 861-2200

GRACEWAY PHARMACEUTICALS,  
LLC, as Borrower

By:

  
Name: John A. A. Bellamy  
Title: Executive Vice President

Notice Address:  
Principal Office:  
340 Edgemont Avenue  
Suite 500  
Bristol, TN 37620  
Attention: Jefferson J. Gregory, CEO  
Telephone: (423) 274-2101  
Facsimile: (425) 279-2199

with a copy to:

GTCR Golder Rauner, LLC  
6100 Sears Tower  
Chicago, IL 60606-6402  
Attention: Edgar D. Janotta, Jr.  
Constantine S. Mihas  
Telephone: (312) 382-2200  
Facsimile: (312) 382-2201

and

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Attention: Christopher Butler  
Jeffrey A. Fine  
Telephone: (312) 861-2000  
Facsimile: (312) 861-2200